(16,406.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 246.

ABRAM W. HENDRY ET AL., APPELLANTS,

vs.

THE OCEAN STEAMSHIP COMPANY, CLAIMANT, &c.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

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a Original.

United States Circuit Court of Appeals for the First Circuit, October Term, 1895.

THE CHATTAHOOCHEE—ABRAM W. HENDRY *et al.*, Libellants, Appellants,
v.
OCEAN STEAMSHIP COMPANY, Claimant, Appellee. } No. 171.

Appeal from the district court of the United States for the district of Massachusetts from final decree (Nelson, J.). February 1, 1896.

Certified Copy of Record and all Proceedings in said Cause to and Including September 30, 1896.

Eugene P. Carver, Edward E. Blodgett, for libellants, appellants; Charles T. Russell, for claimant, appellee.

1 United States Circuit Court of Appeals for the First Circuit, October Term, 1895.

THE CHATTAHOOCHEE—ABRAM W. HENDRY *et al.*, Libellants, Appellants,
v.
OCEAN STEAMSHIP COMPANY, Claimant, Appellee. } No. 171.

Transcript of Record of District Court.

Filed February 27, 1896.

UNITED STATES OF AMERICA, *Massachusetts District*, } *ss:*

At a district court of the United States begun and holden at Boston within and for the district of Massachusetts, on the first Tuesday (being the third day) of December in the year of our Lord one thousand eight hundred and ninety-five.

Before the Honorable Thomas L. Nelson, judge.

ABRAM W. HENDRY *et al.*, Libellants,
v.
THE STEAMSHIP CHATTAHOOCHEE.

This libel was filed in the clerk's office on the thirty-first day of July, A. D. 1894, and is as follows, viz:

2 *Libel.*

To the Honorable Thomas L. Nelson, judge of the United States district court within and for the district of Massachusetts:

Abram W. Hendry and John Millard, of Liverpool, province of Nova Scotia, Dominion of Canada, sole owners of the late topsail

schooner Golden Rule of said Liverpool, for and in behalf of themselves and as the lawful bailees of the cargo of sugar and molasses late on board of said Golden Rule, and for and in behalf of her officers and crew, exhibit this their libel against the steamship Chattahoochee, now lying within the port of Boston, in this district, her boats, engines, tackle, apparel and furniture, and against all persons lawfully intervening therein in a cause of tort for collision, civil and maritime; and thereupon the said libellants allege and articulately propound as follows:

First. That on or about the seventh day of July, current, the topsail schooner Golden Rule, owned as aforesaid, sailed from the port of Ponce, bound for the port of Boston, loaded with a cargo of sugar and molasses; that the said Golden Rule (a new vessel) was then tight, staunch and seaworthy, manned with a good and sufficient crew of men, and commanded by Enos W. Page, a competent and experienced master, and so continued until after the facts herein set forth.

Second. That on Thursday, July 19, 1894, at sunset, the side lights were lighted and properly placed, and continued to burn brightly until after the collision hereafter described; the said schooner was then on the port tack with the wind free, the wind being about southwest, and the said facts continued until the said collision took place.

Third. At 3 a. m. the weather became foggy, whereupon the master directed the mechanical fog-horn to be placed on the forecastle head, and sounded three blasts every two minutes as required by law, all of which was done, a competent man being stationed on lookout and also one at the wheel. At about 3.55 a. m. the man on lookout reported the fog whistle of a steamship on the starboard bow. At a little before 4 a. m. the watch was changed, the
3 mate and one man going on the forecastle head and another at the wheel, the master all of this time being on deck.

In a few moments a steamship was seen by those on board of the schooner through the fog, at a distance of several times her length, proceeding at a high rate of speed, and said steamship, which afterwards proved to be the Chattahoochee, was soon seen to change her course and struck the said Golden Rule on the starboard bow, cutting entirely through said vessel and causing her to sink; that thereafter those on board of said schooner were taken on board of said steamship.

Fourth. That the said collision took place to the south of Nantucket shoals, and by reason of the same the said schooner Golden Rule and her cargo, also the personal effects of the master and crew, were lost, the crew being taken to Savannah, Ga., where said steamship was bound.

Fifth. That the said collision and the damage resulting therefrom was caused wholly by the fault and negligence of the said steamship Chattahoochee and those in charge of her, among other things—

1. In proceeding at an improper rate of speed in a fog.
2. In not stopping and reversing as required by law.

3. In not having a proper lookout.

4. In changing her course to starboard when she should have proceeded to port.

5. In trying to cross the bow of said schooner, and other faults to be shown at the trial of this cause.

Sixth. That by reason of said collision, the schooner Golden Rule, of the value of fifteen thousand dollars ($15,000), her freight of about fifteen hundred dollars ($1,500), became a total loss. Her cargo of sugar and molasses, of the value of about sixteen thousand dollars ($16,000), and the personal effects of the master and crew, of the value of about two thousand dollars ($2,000), were also lost.

Seventh. That the said schooner Golden Rule and those on board of her were wholly without fault, and did all that could have been done to prevent a collision.

Eighth. That the said steamship Chattahoochee is now
4 lying in the port of Boston in this district, and within the admiralty and maritime jurisdiction of this honorable court.

Ninth. That all and singular the premises are true and within the admiralty and maritime jurisdiction of this honorable court.

Wherefore, your libellants pray that process in due form of law may issue against the said steamship Chattahoochee, her tackle, engines, apparel, boats and furniture, and that all persons interested therein may be cited to appear and answer under oath; that this honorable court may be pleased to pronounce for the aforesaid damages and costs, and for such other and further relief as to justice may appertain and as this court is competent to give in the premises.

ABRAM W. HENDRY,
By ENOS W. PAGE, *Attorney.*

CARVER & BLODGETT, *Proctors.*

COMMONWEALTH OF MASSACHUSETTS, }
Suffolk, } ss:

BOSTON, *July* 31, 1894.

Personally appeared before me Enos W. Page, and subscribed to the foregoing libel, and made oath that the same was true to the best of his knowledge and belief.

In witness whereof, I hereunto set my hand and affix my notarial seal the day and year first above written.

[SEAL.] EDWARD E. BLODGETT,
Notary Public.

Stipulation for Costs and Expenses.

On the first day of August, A. D. 1894, then appeared the Ocean Steamship Company, of Savannah, Ga., by James M. Barnard, agent, sole owner and claimant of said steamship, and produced for surety the American Surety Company, of New York. And the said parties, submitting themselves to the jurisdiction of this court, bound themselves, their heirs, executors and administrators, jointly

and severally in the sum of two hundred dollars, unto the said libellants, that the said Ocean Steamship Company should pay all costs and expenses which should be awarded against it in this suit, upon the final adjudication thereof, or by any interlocutory order, whether it be in this or any appellate court.

5 *Stipulation to the Action.*

On said first day of August, A. D. 1894, then appeared the Ocean Steamship Company, of Savannah, Ga., by James M. Barnard, agent, sole owner and claimant of said steamship, and produced for surety the American Surety Company, of New York. And the said parties, submitting themselves to the jurisdiction of this court, bound themselves, their heirs, executors and administrators, jointly and severally in the sum of forty thousand dollars, unto the said libellants, that the said Ocean Steamship Company should abide by all orders and decrees interlocutory or final of the court, and should pay the amount of the final decree of the court, and all sums of money that it should be ordered to pay by the final decree of the court, whether it be in this or any appellate court.

On the second day of August, A. D. 1894, the following claim was filed in the clerk's office, viz:—

Claim.

To the Honorable Thomas L. Nelson, judge of said court:

Respectfully represents James M. Barnard, Jr., that the Ocean Steamship Company, a corporation duly established by law in Savannah, in the State of Georgia, is, and was at the time of the filing of the libel in the above-entitled cause, the sole and *bona fide* owner of the said steamship Chattahoochee, her machinery, tackle, apparel and furniture, and that no other person or party had any interest therein, and that he, the said Barnard, is the duly authorized agent to make claim for said steamship in behalf of said Ocean Steamship Company. Wherefore he prays that the said steamship Chattahoochee, her machinery, tackle, apparel and furniture, may be delivered to said Ocean Steamship Company, and for such further and other relief as to justice may appertain.

JAS. M. BARNARD, JR.

Personally appeared the above-named James M. Barnard, Jr., and made oath that the statements in the above claim by him made are true.

Before me—

[SEAL.] CHAS. THEO. RUSSELL, JR.

RUSSELL & RUSSELL,
Proctors for Claimant.

6 On the twenty-third day of August, A. D. 1894, the following answer was filed in the clerk's office, viz:—

Answer of Claimant.

To the Honorable Thomas L. Nelson, judge of said court:

The answer of the Ocean Steamship Company, of Savannah, Ga., owner and claimant of the steamship Chattahoochee, to the libel of Abram W. Hendry and others, in a cause of collision civil and maritime, and the claimant articulately answers as follows:—

First. The claimant is, and was at the time of the collision hereinafter alleged, the sole owner of the said steamship Chattahoochee.

Second. The claimant is ignorant of the facts alleged in the first article of the libel, and leaves the libellants to prove the same if material.

Third. The claimant is ignorant of the facts alleged in the second article of the libel, and leaves the libellants to prove the same if material. It admits that at the time of the collision the wind was southwest, and that the said schooner Golden Rule was at the time sailing on the port tack with the wind free.

Fourth. The claimant denies all the allegations in the third article of the libel, except as hereinafter expressly admitted. It admits that the collision occurred between the steamship Chattahoochee and the schooner Golden Rule, about eighteen miles southeast of the Nantucket South Shoal light-ship, about four o'clock in the morning of Friday, July 20, 1894, and alleges that the circumstances of the collision were as follows:—

The steamship Chattahoochee, properly manned and equipped with capable and competent officers and crew, left Boston on a regular voyage to Savannah, on the afternoon of Thursday, July 19. About half past twelve o'clock the weather became very foggy; the whistle of the steamship was blown, as required by law; a careful lookout was kept, and the master and first officer were in the pilot-house on duty; the required lights were set and burning brightly. The steamship proceeded in this manner upon her course southwest half west; and about or shortly before four o'clock a single blast of a fog-horn was heard and reported off the port bow. The steamship was slowed down, and the wheel put hard-a-port. Very soon
7 afterwards the white hull of the Golden Rule was seen off the steamer's port bow, very near, and going at a speed of seven or eight knots an hour, under what appeared to be full sail. The steamship kept her wheel hard-a-port and ran ahead at full speed, to avoid, if possible, the collision, but as the schooner was very near, and crossing the bow of the steamship, it was impossible to avoid her, and the steamship struck her on the starboard, forward of the rigging.

Fifth. In answer to fourth article of the libel the claimant admits that the schooner Golden Rule and her cargo were sunk and lost by the collision.

Sixth. The claimant denies all the allegations in the fifth article of the libel, and on the contrary alleges that the collision was caused by the fault and negligence of those in charge of the navigation of the schooner, first, in proceeding at an immoderate rate of speed in

the fog: second, in not keeping a proper lookout; third, in not blowing the fog-horn, which is required by law, and fourth, as the claimant is informed and believes, in changing her course during the approach of the steamer, and said collision was not owing to or caused by any fault or negligence of those in charge of the steamship.

Seventh. The claimant is ignorant of the facts alleged in the sixth article of the libel, and will require proof thereof if material; and it denies that said schooner, cargo, freight and personal effects of the master and crew were of the value alleged.

Eighth. The claimant denies the allegations in the seventh article of the libel.

Ninth. The claimant admits the allegation in the eighth article of the libel.

Tenth. That all and singular the premises are true.

Wherefore the claimant prays that the libel may be dismissed with costs.

OCEAN STEAMSHIP CO.,
By RICHARDSON & BARNARD, *Agents.*

RUSSELL & RUSSELL,
Proctors for Claimant.

COMMONWEALTH OF MASSACHUSETTS, }
Suffolk, } *ss:*

BOSTON, *Aug.* 23, 1894.

Personally appeared James M. Barnard, Jr., one of the above-named firm of Richardson & Barnard, and made oath that
8 the allegations contained in the above answer by him subscribed are true, to the best of his information, knowledge and belief.

Before me—
[SEAL.] RALPH S. BARTLETT,
Notary Public.

This libel was entered at the June term of this court, A. D. 1894, and thence was continued from term to term to the June term thereof, A. D. 1895, when on the eighteenth day of July, A. D. 1895, an interlocutory decree was entered for the libellants, for one-half the value of the vessel, and the full value of the cargo, with the usual right to recoup.

From said June term, A. D. 1895, this libel was continued from term to term to this present term. And on the first day of February, A. D. 1896, the following agreement for damages was filed in the clerk's office, viz:

Agreement for Damages.

It is hereby agreed that the damages sustained by the libellants by reason of the collision in the above-entitled case are as follows, and it is agreed that these damages were sustained by said libellants on July 7, 1894:

Carlos Armstrong, value of cargo molasses and sugar..	$14,448 05
John Millard, " " " " ..	850 00
A. McNutt, " " " canned fish.....	138 00
Manuel Bearra, passenger, value of effects.....	300 00
A. W. Hendry *et al.*, value of sch. Golden Rule.....	14,500 00
" " " " freight sch. Golden Rule.	1,100 00
E. W. Page, value of personal effects and stores.....	900 00
August Williams, value of personal effects.....	135 00
William Abbott " " " "	105 00
W. Wilson " " " "	72 00
A. Williams " " " "	17 00

CARVER & BLODGETT,
Proctors for Libellants.
RUSSELL & RUSSELL,
Proctors for Claimant.

9 *Final Decree.*

And now, on this first day of February, A. D. 1896, this case having been heard and an interlocutory decree having been entered in favor of the libellants for one-half their damages, with the usual right to recoup, and the damages for all of said libellants having been agreed upon, by agreement on file, it is hereby ordered, adjudged and decreed that the following libellants recover of the claimants as follows:

Carlos Armstrong, damages.....	$14,448 05	
Interest to Feb. 1, 1896.....	1,358 08	
Total..		$15,806 13
John Millard, damages.....	850 00	
Interest to Feb. 1, 1896...	79 90	
Total.....		929 90
A. McNutt, damages.....	138 00	
Interest to Feb. 1, 1896...	12 94	
Total...		150 94
Manuel Bearra, damages.....	300 00	
Interest to Feb. 1, 1896.....	28 20	
		328 20
Total.....		$17,215 17

It is hereby ordered, adjudged and decreed that the above amounts, amounting in all to the sum of seventeen thousand two hundred fifteen and seventeen one-hundredths dollars ($17,215.17), be paid to the above named libellants, or their proctors, by the claimant, and that execution shall issue for said amount of seventeen thousand two hundred fifteen and seventeen one-hundredths dollars ($17,215.17) against the claimant and its stipulators herein.

It is further ordered, adjudged and decreed upon the payment of the above amounts by said claimant, that the claimant shall recoup one-half of said total amount, amounting to eight thousand six hundred seven and fifty-eight one-hundredths dollars ($8,607.58) from the amounts hereinafter decreed to the remaining libellants in the above-entitled action, who are entitled to recover one-half of their damages from said claimant according to said interlocutory decree.

It is further ordered, adjudged and decreed that the following libellants, who by said interlocutory decree are entitled to recover only one-half their damages, shall recover of said claimant as follows:

A. W. Hendry *et al.*, damages	$15,600 00	
Interest to Feb. 1, 1896	1,466 40	
Total	17,066 46	
One-half total		$8,533 20
F. W. Page, damages	900 00	
Interest to Feb. 1, 1896	84 60	
Total	984 60	
One-half total		492 30
August Williams, damages	135 00	
Interest to Feb. 1, 1896	12 67	
Total	147 67	
One-half total		73 84
William Abbott, damages	105 00	
Interest to Feb. 1, 1896	9 85	
Total	114 85	
One-half total		57 43
W. Wilson, damages	72 00	
Interest to Feb. 1, 1896	6 76	
Total	78 76	
One-half total		39 38
A. Williams, damages	17 00	
Interest to Feb. 1, 1896	1 60	
Total	18 60	
One-half total		9 30
Total		$9,205 45

It is hereby, ordered, adjudged and decreed that the above amounts, amounting in all to the sum of nine thousand two hundred five and forty-five one-hundredths dollars ($9,205.45), be paid to the said libellants or their proctors by the claimant, with the right in the claimant to recoup from said amount of nine thousand two

hundred five and forty-five one-hundredth dollars ($9,205.45) the sum of eight thousand six hundred seven and fifty-eight one-
11 hundredths dollars ($8,607.58) according to said interlocutory decree, and that execution shall issue against said claimant and its stipulators herein for the sum of five hundred ninety-seven and eighty-seven one-hundredths dollars ($597.87), being the difference between said nine thousand two hundred five and forty-five one-hundredths dollars ($9,205.45) and the said sum of eight thousand six hundred seven and fifty-eight one-hundredths dollars ($8,607.58), in addition to the execution for the above-stated loss of cargo, to wit, seventeen thousand two hundred fifteen and seventeen one-hundredths dollars ($17,215.17).

And it is further ordered, adjudged and decreed that said libellants recover of said claimant the sum of two hundred ninety-five and seventy-one one-hundredths dollars ($295.71) as costs in the above-entitled action, and that execution shall issue therefor against said claimant and its stipulators herein.

On said first day of February, A. D. 1896, it is ordered that the time for taking an appeal be extended to February 29.

On the twentieth day of February, A. D. 1896, the following assignment of errors and prayer for appeal were filed in the clerk's office, viz:—

Assignment of Errors and Prayer for Appeal.

And now comes A. W. Hendry and others, libellants, owners of the schooner Golden Rule, for and in behalf of themselves and for and in behalf of the crew of said schooner, and being duly aggrieved by the decree, rulings and findings of the United States district court for the district of Massachusetts, hereby appeal from said decree, rulings and findings, thereby making the following assignment of errors:

First. That whereas the said court found that the collision between the steamship Chattahoochee and the schooner Golden Rule was caused by the fault of both vessels, the said court should have found that the said collision was alone caused by the fault of the steamship Chattahoochee and those on board of her.

12 Second. That whereas the court found that the schooner Golden Rule was going at a speed of from seven (7) to eight (8) knots per hour, the court should have found that the said schooner Golden Rule was not going over four (4) knots per hour.

Third. That whereas the court found that the schooner Golden Rule was going at more than a moderate rate of speed in a fog, the court should have found that the speed at which she was going in the locality in which she was sailing was a moderate rate of speed.

Fourth. That whereas the court found that the schooner Golden Rule was at fault, the court should have found that she was wholly without fault, and that her owners and crew, the appellants in this case, should have been entitled to recover full damages against the said steamship Chattahoochee.

Fifth. That whereas the court found, and so decreed, that the owners of the steamship Chattahoochee should be entitled to recoup one-half of the damages suffered by the cargo of the schooner Golden Rule from the damages found for the owners of the schooner Golden Rule, the court should have ruled that under the act of Feb. 3, 1893, no such right to recoup existed.

Sixth. That the court should have entered a decree for the libellants for full damages, finding the steamship Chattahoochee alone at fault.

And for the failure of the court to find in the manner prescribed, and for the rulings of law therein made, and for other reasons, the aforesaid owners and crew of the schooner Golden Rule pray that the decision of the district court may be reversed and a decree may be entered for all damages in their favor, and thereupon they appeal from the decision, rulings and findings of the said district court, according to law, to the circuit court of appeals for the first circuit, praying that this their appeal may be allowed.

A. W. HENDRY ET AL.,
Owners of the Schooner Golden Rule,
By CARVER & BLODGETT,
Their Attorneys.

From the foregoing decree, the libellants having claimed an appeal to the United States circuit court of appeals for the first circuit, and having given good and sufficient security that they will
13 prosecute their appeal to effect, and answer all damages and costs if they fail to make their plea good, on this twentieth day of February, A. D. 1896, said appeal is allowed by the court.

A true record.

Attest: FRANK H. MASON, *Clerk.*

Agreement to Omit Depositions, etc., from Appeal Record.

In the above-entitled case it is hereby agreed that all the depositions and testimony and exhibits may be omitted from the appeal record.

CARVER & BLODGETT,
Attorneys for Libellants.
RUSSELL & RUSSELL,
Attorneys for Claimant.

Opinion of the Court, July 18, 1895.

NELSON, *J.:*

There can be no question as to the responsibility of the Chattahoochee for this collision. She was going at the rate of eleven miles an hour, her highest speed, in a fog of considerable density. Such a speed is immoderate in a steamer in a fog, even in mid-ocean, and was especially so where this collision occurred, a locality where she was not unlikely to encounter vessels coming from the southward. When the fog-horn of the Golden Rule was first heard by her look-

out, she was so close upon her that it was out of her power to avoid the collision.

The Golden Rule has a topsail schooner, rigged with twelve sails, including one double square sail on her foremast. She was sailing on the port tack, having the wind five or six points abaft the beam. She was under all her sail except one-half of the square sail on the foremast. The wind was fresh and strong, and, although she was somewhat deeply laden, her speed could not have been less than seven or eight knots an hour.

The vessels were approaching each other so rapidly, eighteen or nineteen knots an hour, that only one blast of her fog-horn was heard on the steamer, and this was undoubtedly the cause of the collision.

14 For failing to reduce her sails and lessen her speed, she was equally in fault with the steamer.

Decree for the libellants for one-half the value of the vessel and the full value of the cargo, with the usual right to recoup.

Bond to Party on Appeal.

Know all men by these presents, that we, Herbert C. Hall, of Newton, and Irving G. Hall, of Somerville, both in the district of Massachusetts, as principals, for and in behalf of A. W. Hendry *et al.*, libellants, are held and firmly bound unto the Ocean Steamship Company, claimant of the steamship Chattahoochee, in the full and just sum of two hundred dollars, to be paid to the said Ocean Steamship Company, its certain attorney, successors or assigns; to which payment. well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this twentieth day of February, in the year of our Lord one thousand eight hundred and ninety-six.

Whereas, lately at a district court of the United States for the district of Massachusetts, in a suit in admiralty depending in said court between A. W. Hendry *et al. v.* Steamship Chattahoochee, a decree was entered against the said Ocean Steamship Company, claimant of said steamship, and the said A. W. Hendry *et al.* having obtained an appeal to remove said cause to the United States circuit court of appeals for the first circuit, to reverse the decree in the aforesaid suit, and a citation directed to the said Ocean Steamship Company, citing and admonishing it to be and appear in the said United States circuit court of appeals for the first circuit, in the city of Boston, Massachusetts, on the twenty-eighth day of February, 1896.

Now, the condition of the above obligation is such, that, if the said A. W. Hendry *et al.* shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their appeal good, then the above obligation to be void; else to remain in full force and virtue.

HERBERT C. HALL. [SEAL.]
IRVING G. HALL. [SEAL.]

This bond and sureties are approved.

RUSSELL & RUSSELL,
For Appellees.

Approved.
THOS. L. NELSON, *U. S. D. J.*

15 *Citation on Appeal.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to The Ocean Steamship Company, claimant of the steamship Chattahoochee, Greeting:

You are hereby cited and admonished to be and appear in the United States circuit court of appeals for the first circuit, in the city of Boston, Massachusetts, on the twenty-eighth day of February next, pursuant to an appeal duly obtained from a decree of the United States district court of the United States for the district of Massachusetts, wherein A. W. Hendry *et al.* are appellants and you are appellee, to show cause, if any there be, why the said decree entered against the said appellants should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Thomas L. Nelson, judge of the district court of the United States for the district of Massachusetts, this twentieth day of February, in the year of our Lord one thousand eight hundred and ninety-six.

THOS. L. NELSON,
United States District Judge.

UNITED STATES OF AMERICA, *District of Massachusetts,* } *ss:*

BOSTON, *Feb.* 20, 1896.

Service of the within citation upon the Ocean Steamship Company is accepted.

OCEAN STEAMSHIP COMPANY,
By RUSSELL & RUSSELL, *Proctors.*

Clerk's Certificate.

UNITED STATES OF AMERICA, *District of Massachusetts,* } *ss:*

I, Frank H. Mason, clerk of the district court of the United States for the district of Massachusetts, certify that the foregoing is a true copy of the record and all proceedings in the cause in admiralty entitled

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in said district court determined, the agreement of parties to omit testimony and exhibits from appeal record, the opinion of the dis-

trict court of July 18, 1895, the bond to party on appeal, and also the original citation issued upon the appeal of the libellants in said cause, with the acknowledgment of service thereon.

In testimony whereof, I hereunto set my hand and affix the seal of said district court, at Boston, in said district, this twenty-sixth day of February, A. D. 1896.

[SEAL.] FRANK H. MASON, *Clerk.*

Agreement as to Proofs.

(Filed in circuit court of appeals Feb. 27, 1896.)

It is hereby agreed that the above-entitled case may be tried upon the following proofs.

CARVER & BLODGETT,
Proctors for Appellants.
RUSSELL & RUSSELL,
Proctors for Appellee.

Proofs in District Court.

Appearances in district court: Eugene P. Carver and Edward E. Blodgett, for libellants; Charles T. Russell, for claimant.

Proofs for Libellants, Now Appellants.

BOSTON, *Feb.* 8, 1895.

Examination of ENOS W. PAGE.

Direct examination by Mr. CARVER:

Q. 1. What is your full name, Captain?
A. Enos William Page.
Q. 2. And where do you reside?
A. Lockport, N. S.
17 Q. 3. How old are you, and how long have you been to sea?
A. Thirty-seven years; twenty-two years to sea.
Q. 4. You are a master mariner, are you? If so, how long have you been one?
A. Nearly thirteen years.
Q. 5. You were the master of the schooner Golden Rule at the time she was sunk in the collision?
A. I was.
Q. 6. When did you become her master?
A. When she was launched, in 1893.
Q. 7. And the date of the collision was——
A. The twentieth day of July, 1894.
Q. 8. At about what time?
A. About ten minutes past four in the morning.
Q. 9. On what voyage was your vessel bound at that time?
A. From Porto Rico to Boston, Ponce, Porto Rico.
Q. 10. Loaded with what?

A. Molasses and sugar.

Q. 11. How large a vessel was the Golden Rule?

A. She was registered one hundred and ninety-nine tons net register.

Q. 12. How long was she?

A. Ninety-nine feet keel, twenty-nine feet beam, eleven and two-tenths depth of hold.

Q. 13. How many decks had she?

A. One.

Q. 14. A single-decked vessel?

A. Yes, sir.

Q. 15. What was her rig?

A. A1.

Q. 16. Rig?

A. Oh, I didn't understand you; topsail rig.

Q. 17. That is, she had square sails on her topmast?

A. Square sails on her topmast, and fore-and-aft foresail.

Q. 18. How does that differ from a brigantine, or a hermaphrodite?

A. A brigantine has staysails between the masts in place of a foresail, and a topsail schooner has a foresail in room of staysails, and also a square sail to drop—sometimes it is in two pieces, and sometimes it is in one.

Q. 19. How was this vessel loaded?

A. Quite deep; ordinarily deep.

Q. 20. Now, coming down to the nineteenth day of July, what time of night did you come on deck?

A. Came on deck at midnight.

Q. 21. That is, the starboard watch came on deck at midnight?

A. Yes, sir.

18 Q. 22. And the port watch was relieved?

A. The port watch was relieved.

Q. 23. How many men did you have in all on this vessel?

A. Seven, all told.

Q. 24. How many men were there in each watch?

A. Two men and the mate in the port watch, and two men and myself in the starboard watch.

Q. 25. How was the weather when you came on deck at twelve o'clock?

A. It was a little hazy, but not to call foggy.

Q. 26. And did it afterwards clear up?

A. Yes; along about two o'clock it was very bright and clear and a strong breeze.

Q. 27. From what direction?

A. I should judge about southwest by west.

Q. 28. Did the wind change between that time and the time of the collision?

A. I think it went more southerly; it might have changed a point; it was about southwest, I thought, at the time of the collision.

Q. 29. How were you sailing—how was your vessel sailing, on which tack, at twelve o'clock?

A. On the port tack, wind free.

Q. 30. And did she change her tack at all?

A. No.

Q. 31. Did you go below at any time between twelve and four o'clock?

A. I was down several times through the watch, looking at my chart.

Q. 32. Did you go to bed at all?

A. No, I didn't go to bed at all.

Q. 33. You say at two o'clock it was clear?

A. Yes.

Q. 34. When you went below who had charge of the deck?

A. The man Broden, he acted as boatswain.

Q. 35. When, if at any time, did it become thick after that time?

A. About three o'clock, five minutes past three, the first blast of the fog-horn was sounded. I particularly noticed the time.

Q. 36. Five minutes past three. Now, how was the wind at twelve o'clock in comparison with the wind at four o'clock?

A. Oh, the wind was heavier at twelve.

Q. 37. And how did the wind continue from twelve to two?

A. From twelve to two it increased a little; at two o'clock there was a fresh breeze—I judged the vessel was going eight knots—
19 and at half past two it commenced to moderate, and it moderated some after the fog shut down, and at daybreak it moderated still more, as it generally does at daybreak and sunset. The wind generally moderates at daybreak and sunset.

Q. 38. What time was it that you first came on deck before the collision?

A. The last time I was below was just as the steamer was reported, ten minutes to four.

Q. 39. Ten minutes to four?

A. Ten minutes to four.

Q. 40. That is the time you came on deck?

A. Yes, sir; the last time I was below.

Q. 41. And when you came on deck, which way did you come on deck?

A. I came on deck through the after companionway.

Q. 42. That is right near the wheel?

A. Yes, sir; she only had one; the cabin was small, and I passed round on the windward side.

Q. 43. Were you on deck when the wheel was relieved?

A. Yes, sir.

Q. 44. What time was the wheel relieved?

A. At four o'clock.

Q. 45. Who was on the deck when you came on deck?

A. F. Broden and August Williams.

Q. 46. And where was August Williams?

A. August Williams was just coming aft. He reported the steamer, and I heard that, and came on deck. Then the watch was called at ten minutes to four.

Q. 47. Now, with regard to the fog-horn on board of your vessel, when did it commence to blow?

A. Five minutes past three.

Q. 48. How many blasts were blown?

A. Three blasts in succession.

Q. 49. And at what intervals between each blast?

A. From a minute and a half to two minutes.

Q. 50. Did you hear it all that time?

A. I did.

Q. 51. Now, what kind of fog-horn was this?

A. It was a mechanical fog-horn, that went with a shaft, about two and a half feet long.

Q. 52. One of those English horns?

A. Yes. You pulled it out and pressed it in, and pressing it in made it sound.

Q. 53. What sort of a sound did it give?

A. Good sound.

Q. 54. How was the horn blown with reference to the blasts of the steamer?

A. It was answered—every blast of the steamer's whistle was answered by our horn with three blasts.

Q. 55. How long do you think it was from the time you first heard the blasts of the steamer's whistle until the time the collision took place?

A. It was over fifteen minutes, I should judge; between fifteen and twenty minutes.

Q. 56. What course did your vessel steer when you came on deck, and how had she been steering?

A. North by east half east from twelve o'clock.

Q. 57. And how was she steering at the time of the collision?

A. North by east half east.

Q. 58. Did you see the compass after you came on deck?

A. After the steamer was reported I looked at the compass, and I saw she was heading directly on her course, and I told the man not to alter her course.

Q. 59. You say that you came on deck and heard the whistle of the steamer. I suppose it was a long blast of the whistle?

A. Yes, sir; one long blast.

Q. 60. How did it bear from your vessel?

A. I couldn't judge correctly. It was quite a distance, but it was somewhere on our lee bow.

Q. 61. That is, on your starboard bow?

A. On our starboard bow.

Q. 62. But you couldn't tell the direction?

A. No.

Q. 63. How long was it before you could discern the direction?

A. About four o'clock I judged she was somewhere about four points on the starboard bow.

Q. 64. Did you see the steamer before the collision took place?

A. I seen her as she was reported. I was on the starboard quarter,

and the man sung out, "There she comes," and I looked and seen the steamer.

Q. 65. How far off should you think she was?

A. I should judge she was about two thousand feet.

Q. 66. Two thousand feet. Well, now, with regard to this fog, what kind of a fog was it—was it a thick fog?

A. Not very thick. It was a low fog; not one of those
21 black, dense fogs. I seen the steamer's masts plainer than I could see her hull when I first seen her.

Q. 67. Well, what did you notice about the steamer after you saw her, if anything?

A. I noticed that she was coming directly at us, head for us, and shortly directed her course to starboard—that is, he ported his helm.

Q. 68. Could you see her swing to starboard?

A. Yes, sir; I noticed that she was swinging.

Q. 69. Could you form any judgment as to how fast she was going?

A. Well, I judged she was going eleven or twelve knots. I seen she was coming very fast.

Q. 70. Now, provided she had kept on her course after you first saw her, do you think there would have been any collision?

A. I think we would have passed ahead of her?

Q. 71. And in case she had put her head to starboard instead of to port, what would have been the result then?

A. She would have passed clear.

Q. 72. How, in case the steamer had reversed, when you first saw her, would there have been any collision then?

A. She would still have passed ahead of the steamer.

Q. 73. She would have gone under your stern, you mean?

A. Yes, sir.

Q. 74. How fast do you think you were going at the time of the collision?

A. Well, I couldn't judge correctly; between five and six knots. It was smooth. The vessel was standing straight up. I had looked over her side some time before that in regard to her speed, to see whether it was prudent to shorten sail, and I didn't. I considered it was just nice working speed. I could wear ship or tack ship or anything, and my yards were braced for that occasion in case I met another vessel, and she had the right of way.

Q. 75. Did you have any log out?

A. Yes, sir.

Q. 76. Was it a patent log?

A. Yes, sir.

Q. 77. Was it hauled in?

A. The mate hauled it in at four o'clock.

Q. 78. And how many miles did he tell you she had gone?

A. He told me she had gone twenty-eight miles from twelve until four.

Q. 79. And how did you estimate the speed between the
22 different hours?

A. I judged at twelve o'clock she was going at about seven

knots. At two o'clock I judged she was going about eight and a half; and between two and three she was going seven, and so on down as it moderated.

Q. 80. How was the fog-horn blown from the time that the fog set in until the time of the collision—what intervals between?

A. Three blasts.

Q. 81. You say there were three blasts blown. Now, how long an interval would there be between each set of blasts?

A. From a minute and a half to two minutes.

Q. 82. Was it blown oftener after the steamer approached?

A. Yes.

Q. 83. How were the blasts blown with reference to the steamer's whistles, after you heard the steamer's whistle?

A. Answered the steamer's whistle.

Q. 84. That is, the steamer would blow?

A. The steamer would blow, and we would answer with three blasts.

Q. 85. Where did you understand your vessel was at the time of the collision?

A. I judged her to be about twenty-five miles southeast of Nantucket South Shoal light-ship.

Q. 86. About where that point is marked (producing a chart)?

A. About there.

Q. 87. Out of the general run of vessels?

A. I suppose I was just about out of the line of ocean steamers.

Q. 88. Did your vessel change her course from the time that you——

A. No, sir.

Q. 89. Was anything said to the man at the wheel by anybody; if so, what?

A. When the man reported the steamer he sung out, "Hard down her helm," and I sung out from the poop, "Keep her straight, whatever you do."

Q. 90. How far were you from the man at the wheel at that time?

A. I was about ten feet.

Q. 91. On which side of him?

A. I was on the windward side of him. I was on the port quarter, and he was at the wheel.

Q. 92. Did you watch the man at the wheel?

A. I did.

Q. 93. Did he change his course at all?

A. No, sir.

Q. 94. How far do you think it was from the deck of your
23 vessel to the water?

A. Well, amidships it was not very far, not more than a foot or——

Q. 95. Well, was your vessel loaded as deep as you ever loaded her?

A. She had been deeper. Sugar will load deeper than molasses.

Q. 96. Now, about her sail, what sails did you have set?

A. All but one square sail set.

Q. 97. That is, the sail forward?

A. Yes, sir.

Q. 98. And she had two masts, and she had the upper square sails and the mainsail?

A. Yes, sir.

Q. 99. Did you have any jibs on her?

A. Yes, sir.

Q. 100. Did you have any staysails?

A. No, sir.

Q. 101. Where did the steamer strike your vessel?

A. Just forward of the fore rigging, on her starboard bow.

Q. 102. And what was the result?

A. She went entirely through her, as far as I could see.

Q. 103. Went entirely through her, and your crew were taken aboard of the steamer?

A. Of the steamer.

Q. 104. And what became of the vessel?

A. She sank down until just her port quarter was out. She laid over at an angle of, I should judge, about forty-five degrees. The mainmast was standing and the mainsail set.

Q. 105. Was it possible to save her in any way?

A. No, sir.

Q. 106. The bow was——

A. The bow was entirely cut off.

Q. 107. When you got on deck did you see anybody aboard of the Chattahoochee?

A. Yes, sir. I inquired for the captain, and went directly to the bridge.

Q. 108. Did you have any conversation with him?

A. I said to the captain, "This is a bad business, Captain;" and he says, "Captain, you don't feel any worse over it than I do." That is the answer he made.

Q. 109. Was anything else said?

A. Not at that time.

Q. 110. Did you have any other conversation?

A. Some time later through the day I was in his cabin, and we had some conversation.

Q. 111. What was said at that time?

A. I couldn't remember all he said. He said, "Captain,"
24 he says, "you'll get your pay for your vessel. I'm going to resign," he says, "I've got enough of this."

Q. 112. Was anything said about the speed of the steamer or anything about the fog signal?

A. Yes; he spoke in general about hearing her horn, and he stopped and located it, and after he thought he had located it properly he started ahead on his course again. After seeing the schooner he ordered full speed ahead, he said, and ported his helm.

Q. 113. Can you see the man here who was the captain of the steamer?

A. Yes, sir.

Q. 114. This gentleman (pointing)?

A. Yes, sir.

Q. 115. And you were landed by the steamer at Savannah?

A. Yes, sir.

Q. 116. With the rest of the crew?

A. Yes, sir.

Q. 117. And do you know what became of your men?

A. Some of them I got back to Boston with me, and others I couldn't.

Q. 118. The others shipped aboard of other vessels?

A. I didn't know what became of them. The last I seen of one he was drunk, and the other was nearly so.

Cross-examination.

By Mr. RUSSELL:

X Q. 119. Do you own any part of the Golden Rule, or did you?

A. No, sir.

X Q. 120. Who are the owners?

A. A. W. Hendry and John Miller, merchants, of Liverpool, N. S.

X Q. 121. Did they own as partners, or did each have an individual interest?

A. Each had an individual interest.

Mr. CARVER: Each owned one-half.

X Q. 122. Each owned one-half?

A. Yes, sir; they were not partners in her.

X Q. 123. And the vessel was built in the summer of 1893?

A. Yes, sir.

X Q. 124. Built in Liverpool, N. S.?

A. Yes, sir.

X Q. 125. Were you present when she was built?

A. No, sir; only at the finishing of her. I helped rig her.

X Q. 126. How was she built,—by contract?

A. No. sir.

X Q. 127. How?

A. By day labor.

X Q. 128. Who superintended her building?

A. A. W. Hendry.

X Q. 129. Is he a ship-builder?

A. He is a merchant. He has vessels built for his purpose.

X Q. 130. Does he have a ship yard?

A. Yes, sir.

X Q. 131. And this vessel was built in his yard by him?

A. Yes, sir.

X Q. 132. Do you know what she cost?

A. No, sir; I couldn't tell you exactly what she cost; about $12,000, I should judge.

X Q. 133. That is merely your guess. You don't know?

A. Yes; I don't know.

X Q. 134. And she was built something like a hermaphrodite brig?

A. Yes, sir.

X Q. 135. That is, she had certain square sails on the foremast?

A. Yes, sir.

X Q. 136. And how many sails did she carry on the foremast?

A. She carried two topsails, a topgallant-sail, and a fore-and-aft foresail.

X Q. 137. That is, the lower sails, I suppose?

A. Yes, sir.

X Q. 138. And what sails did she carry on the mainmast?

A. Mainsail and gaff-topsail.

X Q. 139. And fore-and-aft sails?

A. Fore-and-aft sails.

X Q. 140. The head sails were fore-and-aft sails?

A. Fore-and-aft sails; yes, sir.

X Q. 141. Then how many staysails did she have?

A. We didn't carry any.

X Q. 142. How many jibs did you carry?

A. Four.

X Q. 143. That made how many sails in all?

A. Twelve.

X Q. 144. Do you know what your square area of spread of canvas was?

A. I do not.

X Q. 145. You had twelve sails all told, and she was fully rigged?

A. Yes, sir.

X Q. 146. Was she faster than a schooner of the same build with that rig?

A. Yes, sir.

X Q. 147. A good deal faster, when she had the wind free, wasn't she?

A. Not when the wind was well aft.

26 X Q. 148. Wouldn't the square sails draw better with the wind aft than when you were beating?

A. Well, if you had them properly trimmed.

X Q. 149. And you as a good captain, did keep them properly trimmed, didn't you?

A. But I had them braced up at this time for quick working. I didn't have them doing their full work.

X Q. 150. You didn't expect to have to change your course that morning, did you?

A. I didn't know but what I might meet a sailing vessel and have to change my course.

X Q. 151. Exactly; you might meet a vessel that was beating. You wouldn't have to change your course if——

A. I would have to change my course for any vessel running——

X Q. 152. I understand; but except as you might meet a vessel, you had no intention of changing your course for some hours?

A. No, sir.

X Q. 153. Your schooner was painted white, wasn't she?

A. Yes, sir.

X Q. 154. Now, on July 19 you were somewheres off Nantucket?

A. Yes, sir.

X Q. 155. Had you made any land on your voyage before that?

A. None at all.

X Q. 156. You were sailing by dead reckoning?

A. I had good observations at noon on the 19th.

X Q. 157. When did you leave Ponce?

A. On the seventh day of July.

X Q. 158. What were your latitude and longitude on noon of the 19th?

A. I can't remember.

Mr. CARVER: We have got it here.

X Q. 159. Now, when did you take in that square sail?

A. I took it in through the night.

X Q. 160. Do you remember the time?

A. I took it in in the middle watch.

X Q. 161. That was between eight and twelve?

A. Between twelve and two.

X Q. 162. Between twelve and two you took it in. Were you on deck when it was taken in?

A. Yes, sir.

27 X Q. 163. Why did you take it in?

A. I didn't want to go too fast.

X Q. 164. On account of the fog?

A. No, it was not foggy then.

X Q. 165. You thought even without the fog you were going too fast with what sails you had set then, did you?

A. No; I didn't want to get up on the coast until daylight.

X Q. 166. You were going so fast, with all your sails set, that you were afraid you would reach the land before daylight—is that true?

A. No; I took it in in case it became hazy; in case it became foggy.

X Q. 167. That sail is half a sail, isn't it?

A. Yes, sir.

X Q. 168. Where did it come on the foremast—what sails are below it?

A. There are no sails below it.

X Q. 169. It is the lowest sail on the foremast, is it?

A. Yes, sir.

X Q. 170. And that you say was taken in about two o'clock?

A. About two o'clock.

X Q. 171. You stood your watch, didn't you?

A. I was up and down through my watch. I didn't stand it right through. I had a man to lookout if I went below.

X Q. 172. It was your duty to stand watch, wasn't it? You had no second mate on board?

A. I had a man acting as boatswain.

X Q. 173. But you had no second mate on board?

A. No, sir.

X Q. 174. And it was the starboard watch from twelve o'clock until four?

A. Yes, sir.

X Q. 175. How much of that time were you on deck?

A. I didn't look at the clock particularly.

X Q. 176. Were you on deck from eight o'clock until twelve?

A. No, sir.

X Q. 177. The mate was then on deck?

A. Yes, sir.

X Q. 178. You came on deck at twelve o'clock?

A. Yes, sir.

X Q. 179. And when you went below the only two men on deck were the man at the wheel and the man on the lookout?

A. Yes, sir.

28 X Q. 180. How many times were you below?

A. About three times, to look at my charts.

X Q. 181. How long did you remain below when you went below those times?

A. Perhaps ten minutes, perhaps five.

X Q. 182. Did you lie down when you went below?

A. No, sir.

X Q. 183. Take off any of your clothes?

A. No, sir.

X Q. 184. And who was in charge of the vessel when you went below?

A. F. Broden.

X Q. 185. And he had the wheel?

A. Yes, sir.

X Q. 186. With all this canvas in front of him?

A. Yes, sir.

X Q. 187. And the man at the lookout didn't have command?

A. He didn't have command; he was placed there on the lookout.

X Q. 188. Now, when was the last time you went below before about four o'clock?

A. About fifteen minutes to four.

X Q. 189. How long had you been on deck before then?

A. I had been on deck from half past two.

X Q. 190. You had been on deck about an hour, then?

A. A little over.

X Q. 191. What were you doing?

A. On deck?

X Q. 192. Yes.

A. Walking around the deck from one side to the other.

X Q. 193. During that time did you hear any fog-horn or steam whistle?

A. No.

X Q. 194. And you continued on your course with whatever speed the wind gave you, with that sail set?

A. Yes, sir.

X Q. 195. What took you below at half past three?

A. To look at my chart.

X Q. 196. Did you think you were getting near the land?

A. I went to judge what distance I was off. I thought of sounding.

X Q. 197. You consulted your chart three times during those two hours, if I understand you, between two o'clock and four—you consulted your chart three times?

A. Yes, sir.

X Q. 198. Was that the chart that you consulted, the one which is before his honor now?

A. No, sir.

X Q. 199. It is a large chart, I suppose, of the whole coast?

A. It was a chart from Cape Hatteras to Cape Cod.

29 X Q. 200. Now, you thought you were going pretty fast, if you had to consult your chart three times in two hours, didn't you?

A. No, sir; I naturally do it. A man coming along the coast, if he is a navigator, he wants to keep run of his position, which I always try to do.

X Q. 201. What were you reckoning your speed to be when you looked at your chart?

A. About seven knots.

X Q. 202. Did you use the lead any that night?

A. I did not.

X Q. 203. How could you tell how far you had changed your position from the time when you looked at the chart at one time, until you looked at it the next time?

A. Judging by the speed the vessel was going through the water.

X Q. 204. How fast did you consider she was going?

A. About seven knots.

X Q. 205. So that when you would go down below and look at your chart, you would give your vessel's position as being seven miles ahead of where she was before that?

A. Yes, sir.

X Q. 206. Or rather, at the rate, I would say, of seven miles an hour?

A. Yes, sir.

X Q. 207. Now, what called you on deck before the collision?

A. I heard the man report a steamer's whistle.

X Q. 208. Didn't a man come down into the cabin for you?

A. No, sir.

X Q. 209. Then your man Williams is mistaken in saying that he did?

A. Yes, sir.

X Q. 210. He is wrong in that statement, is he?

A. Yes, sir.

X Q. 211. You are sure he didn't come down, or send any one to call you?

A. No, sir; no one came for me.

X Q. 212. You heard some one say, "There is a steamer"?

A. Yes, sir; I was in the main cabin.

X Q. 213. So that the steamer was near enough then to you for you to hear her whistle in the main cabin?

A. I didn't hear her whistle there. I said I heard the report.

X Q. 214. What did you hear said?

A. I heard the man report the steamer's whistle.

X Q. 215. What man?

A. Williams.

X Q. 216. What did Williams say?

A. He thought he heard a steamer's whistle.

X Q. 217. Where was Williams at the time?

A. Williams came aft.

X Q. 218. And where was he standing when he made that statement?

A. He was standing by the corner of the house.

X Q. 219. Was he saying that to you or to some one on deck?

A. No, sir; to the man that had charge of the deck when I went below.

X Q. 220. And at that time the man at the wheel was in command of the vessel?

A. Yes, sir.

X Q. 221. That was Broden?

A. Yes, sir.

X Q. 222. Now, when did you first hear the steamer's whistle after you got on deck?

A. I was on deck several minutes before I heard the steamer's whistle.

X Q. 223. Did you have any talk with Broden or Williams during that time?

A. No, sir.

X Q. 224. What did you do during that time?

A. I went on the main deck, where the least noise would be, and listened.

X Q. 225. Did you go forward?

A. Not right in the bow.

X Q. 226. Why did you go to one place rather than another?

A. To hear better.

X Q. 227. And you didn't know from which direction, starboard or port, or bow or quarter, you were going to hear her?

A. No, sir.

X Q. 228. You didn't know anything except that a whistle had been heard somewhere around the horizon from your vessel?

A. Yes, sir.

X Q. 229. And then you heard it on your starboard bow?

A. I judged it to be on the starboard bow.

X Q. 230. Was that the time you judged it to be about four points on your starboard bow?

A. Yes, sir.

X Q. 231. How far off was it then?

A. I couldn't tell; I should judge it was a long distance off.

X Q. 232. And then what did you do?

A. I went on the poop and walked backward and forward.

31 X Q. 233. After hearing the whistle the first time, you came aft?

A. Yes, sir.

X Q. 234. And when you came aft, who was forward?

A. The man Broden; Williams was forward.

X Q. 235. And Williams was relieved by Wilson after that, wasn't he?

A. Yes, sir.

X Q. 236. When you first went forward Williams was there alone?

A. Williams was there.

X Q. 237. Alone?

A. No, sir; Williams was not there.

X Q. 238. Who was there when you went forward after coming up from the cabin?

A. There was no one there for about one minute.

X Q. 239. When you came up from your cabin there was not any one forward of your quarter-deck?

A. No, sir.

X Q. 240. And until you went forward you were the only person forward?

A. Yes, sir.

X Q. 241. And you waited there forward until you heard that whistle?

A. Yes, sir.

X Q. 242. And how soon after that did some one come forward?

A. Williams was right there and blew the whistle.

X Q. 243. You are sure it was Williams?

A. Yes, sir.

X Q. 244. Where was Wilson?

A. In the forecastle.

X Q. 245. And when Williams came forward you went aft?

A. I went on the poop.

X Q. 246. Did you try to blow the fog-horn?

A. No, sir.

X Q. 247. Then, from the time you went forward until Williams got there your fog-horn was not blown?

A. No, sir; it was only about two minutes.

X Q. 248. And there was no one on the lookout?

A. I was on the lookout.

X Q. 249. But only in the sense that, as master of the vessel, you went forward because you didn't know from what direction the whistle might be heard. Now, you came aft and stood by the man at the wheel after that, as I understand you; and how many blasts of the steamer's whistle did you hear after that?

A. I couldn't tell you.

32 X Q. 250. Well, did you hear ever so many?

A. There were quite a number.

X Q. 251. How far do you think you could have heard a steamer's whistle coming up from the leeward against the wind?

A. It was moderate that morning. You would hear it a long way.

X Q. 252. How far? A mile?

A. I haven't any idea how far you could hear it. Sometimes you can hear it farther than others.

X Q. 253. Haven't you any idea?

A. I should judge two miles; perhaps three miles; two or three miles.

X Q. 254. Do you know how many blasts you heard after you got back on your quarter-deck?

A. I don't know.

X Q. 255. Well, after that you saw the steamer?

A. I saw the steamer.

X Q. 256. And she was coming from the direction in which prior to that you had heard the sound?

A. She was.

X Q. 257. And heading right for you?

A. Yes, sir.

X Q. 258. And swinging under a port helm?

A. After I seen her some little time she swung under her port helm.

X Q. 259. She was under way all the time you saw her?

A. Yes, sir.

X Q. 260. How near was she to you the first time you saw her?

A. I should judge about two thousand feet.

X Q. 261. About half a mile, then?

A. No, a third of a mile.

X Q. 262. And she was then under her port helm?

A. No; not when I first saw her.

X Q. 263. How near to you should you judge she was when you saw she was swinging to starboard?

A. About twelve hundred feet.

X Q. 264. So that for eight hundred feet she came right on, and then began to swing to starboard?

A. Yes, sir.

X Q. 265. And very soon she began to head for you, head on?

A. Yes, sir.

X Q. 266. Why didn't you starboard your wheel?

A. It was not my place to do it.

X Q. 267. And was that the only reason you didn't do it?

A. Yes, sir.

X Q. 268. And from that time until you saw her under the
33 port wheel, although your mate told you it was a proper thing to do, you refused to put your wheel to starboard?

A. I did, because I was doing what was right.

X Q. 269. You meant to keep on, whether the steamer went through you or not.

A. I had the right of way.

X Q. 270. Exactly; and you meant to keep it, whether you cut the steamer down, or whether the steamer cut you down—you were going to Boston.

A. I was going to Boston, and I had the right of way.

X Q. 272. And you were not going to stop for anything in front of you?

A. I was going to change for anything that had the right of way of me.

X Q. 273. You could have steered either way?

A. Yes, sir.

X Q. 274. And, going seven miles an hour, you would have come to pretty quickly if you had luffed, wouldn't you?

A. I was not going seven miles an hour.

X Q. 275. Well, going six miles an hour,—you would have luffed pretty quickly if you had put your wheel down, wouldn't you?

A. I don't think she was going six.

X Q. 276. Well, going five, or three or four,—you would have luffed pretty quickly, wouldn't you, if you had put your wheel down?

A. I would have if it was my place to do so.

X Q. 277. And you continued on your course,—you stayed on the quarter-deck, without making any change of your wheel, until the steamer struck you. Where did she strike you?

A. She struck me forward of the fore rigging.

X Q. 278. And how far is that from your stem?

A. I should judge it was about twenty-five feet.

X Q. 279. And your length over all is about one hundred, you say?

A. About one hundred and ten.

X Q. 280. So that if you had given way for eighty-five feet the steamer would have cleared you—she needed only eighty-five feet more of room or time to get by your stern?

A. If she hadn't ported her helm, she would have went by my stern.

X Q. 281. As the vessels approached each other she would hear you from her port, wouldn't she?

A. Yes, she would hear me nearly ahead.

34 X Q. 282. Wouldn't you be on her port?

A. If she was coming at me, I was going ahead of her.

X Q. 283. She would be on your starboard, and you on her port?

A. Yes, sir.

X Q. 284. So that she would hear your fog-horn on her port?

A. Yes.

X Q. 285. Do you think it good seamanship to steer into a vessel?

A. Not if she is a sailing vessel and has the right of way.

X Q. 286. You say she ought to have starboarded her wheel?

A. After she found me on her port bow she should have put her helm to starboard.

X Q. 287. But before doing that she would have to get by you, wouldn't she, take the chance of getting under your stern, or of your getting under her bow?

A. My stern wouldn't hurt her. That is where she should go.

X Q. 288. But in order to do that she had got to let you cross her bow. You would see the steamer a good deal further than the steamer would see you that morning, of course?

A. I don't know that either.

X Q. 289. Weren't you very low down on the water?

A. Yes; but we had sails set.

X Q. 290. And your sails were white, weren't they?

A. Yes.

X Q. 291. And your hull was white, and the steamer was black, wasn't she?

A. Yes, sir; her hull was black.

X Q. 292. She was well out of water, wasn't she?

A. Quite well out of water.

X Q. 293. Now, if you hadn't been going as fast as you were, the steamer would have gone by your bow, wouldn't she?

A. No, sir.

X Q. 294. Why not?

A. She would have got about far enough for us to sink her.

X Q. 295. Why wouldn't she have gone by your bow, if she struck you about twenty-five feet abaft your stem, going at the rate of speed at which you were—if you had been going a little slower than that, she would have got by your bow, wouldnt she?

A. No; we should have had about three hundred feet——

X Q. 296. It would depend on how much slower you went. If you had been going three or four knots instead of six or seven she would have gone by your bow, wouldn't she?

A. If she had reversed her engines she would have cleared us.

X Q. 297. I am not speaking of that. If you had been going a mile an hour slower, she would have gone by your bow, wouldn't she?

A. No, sir.

X Q. 298. If you had been going only four-fifths as fast as you were going, she would have gone by your bow, wouldn't she?

A. No, sir.

X Q. 299. And if you had been going so for an hour you would have been a mile behind her, wouldn't you?

A. There are a good many ifs.

X Q. 300. Did you hear any fog-horn from another vessel at that time?

A. No, sir.

X Q. 301. Before or after the collision?

A. After the collision; after I was on the steamer.

X Q. 302. How soon after the collision did you hear this other fog-horn?

A. While we were on board. I suppose it was twenty minutes; just before the fog cleared.

X Q. 303. Was the steamer under way?

A. Yes, sir: ten minutes after she struck us.

X Q. 304. What did you hear? What was the blast? What was the sound?

A. I didn't pay any attention to it.

X Q. 305. Whether it was one blast or two or three?

A. I didn't pay any attention to it.

X Q. 306. Before that you heard nothing outside of your own vessel, except the whistle from the steamer?

A. No, sir.

X Q. 307. And you blew your horn once in every minute and a half or two minutes?

A. Yes, sir.

X Q. 308. Is that fog-horn a new patent fog-horn?

A. No, I don't know that it is; no—no, it is not new. I have seen them before.

X Q. 309. Where did your vessel get it?

A. From a ship.

X Q. 310. It was old, then, when you got it on your vessel?

A. It was in thoroughly good condition.

X Q. 311. It was not a new one?

A. No, sir.

36 X Q. 312. And it was blown by mechanical means, by pressing a piston down?

A. Yes, sir.

X Q. 313. When you blew those three blasts to indicate that you were running free, did you push the piston down each of the three times?

A. Yes, sir.

X Q. 314. Then your blast is just as long as if you were blowing one blast for running on the starboard tack, or two on the port tack?

A. No, sir. You can push it down slow or you can push it down fast.

X Q. 315. Well, when you are blowing three blasts, how should it be pushed,—slow or fast?

A. Push it down fast.

X Q. 316. That is, you push it all the way down?

A. No; long enough to make a sufficient blast. We have to use judgment in that.

X Q. 317. Well, I want to see what your judgment is about pushing it all the way down three times; do you do the same as when you blow it once, to indicate that you are sailing free?

A. Yes, sir.

X Q. 318. And you do it no more than all the way down—of course you can't—if you are blowing one or two blasts? Supposing a sailor wants to blow three blasts, how far down does he push it,—all the way down for each of the three blasts?

A. No. Sometimes some will, and sometimes not.

X Q. 319. Well, as they did it that morning on your vessel?

A. We are supposed to give three blasts of our horn.

X Q. 320. Now I am trying to find out how you gave those three blasts.

A. By pushing that piston down three times.

X Q. 321. All the way down three times. Then it is three times as much work to signal that you are sailing free as it is to signal that you are sailing on the starboard tack?

A. Yes.

X Q. 322. Is that done with one hand or with both hands?
A. Both hands.
X Q. 323. Why is it easier for one man to do it than another?
A. Because two men can't handle it.
X Q. 324. Why is it easier for one man to do it than for some other man to do it, my question is?
A. One man may have more muscle than another.
37 X Q. 325. It is a matter of muscle, is it?
A. No. He may do it with less physical labor, but he won't make any better effect, as I know of.
X Q. 326. Couldn't the mate have sounded it better than Williams and Wilson?
A. No, sir; I don't know why he should.
X Q. 327. You don't know of any reason why the mate should blow it better than they?
A. He took it to let the man that was blowing it take the lookout.
X Q. 328. Why couldn't he take the lookout and let the man that was blowing it blow the fog-horn?
A. Well, that was his judgment.
X Q. 329. You don't know of any reason why he did it?
A. I don't know of any reason.

Direct examination resumed by Mr. CARVER:

Q. 330. After you saw the steamer, was there anything that your vessel could have done to prevent the collision?
A. Nothing.
Q. 331. And in regard to the movement of the steamer, you say that you saw her bow swinging to starboard?
A. To starboard; yes sir.
Q. 332. How long was that before the collision took place?
A. A minute.
Q. 333. That is, it was a very short time—you say a minute—do you mean a very short time?
A. Well, nearly a minute; shortly after I seen her; when I first seen her she was coming directly at me, and the next I seen she was swinging her head to starboard.
Q. 335. Do you know what time it was the collision took place?
A. As nearly as I could judge about ten minutes of four, by our time,—ship's time.
Q. 336. That is, mean time?
A. That is, apparent time, on ship.
Q. 337. Now, you say when you first went forward, ten minues to four, or a little before it, Williams was not on the forecastle head?
A. No.
Q. 338. Had you heard the blast of your horn before you came on deck?
A. Yes, just before I came on deck.
38 Q. 339. And did you hear Williams when he went on the forecastle head again?
A. Yes, sir.

Q. 340. What did he do when he went on the forecastle head?

A. Blew the horn immediately.

Q. 341. How long a time do you think intervened between the time that you heard the last blast, and the time when you saw him go on the forecastle head, after you got on deck?

A. About two minutes.

Q. 342. No, about this blast of the whistle; when was it that you heard the blast of the steamer's whistle?

A. I heard the blast of the steamer's whistle about, I should say it was—about eight minutes to four.

Q. 343. Well, where was Williams when you heard the blast of the steamer's whistle?

A. Williams was then on the forecastle deck, or just going on the forecastle deck.

Q. 344. How far distant do you think the steamer was when you first heard her whistle?

A. I should judge she was two or three miles away. Of course you couldn't judge of a whistle very close. Sometimes you will hear a fog trumpet several miles off, and at other times you will be quite close to it; but, a moderate morning like that, I should judge we would hear that steamer's whistle three miles.

Q. 345. How did it sound—faint or loud?

A. Faint; very faint.

Q. 346. Which do you think you could hear furthest,—the fog horn or the steamer's whistle?

A. Oh, the steamer's whistle.

Q. 347. How much further than the fog-horn?

A. Oh, a good ways, I should think.

Q. 348. What sort of a whistle did this steamer have?

A. She had a good sounding whistle when she came near, so that we heard it distinctly.

Cross-examination resumed by Mr. RUSSELL:

X Q. 349. When did you look over the side to see whether your vessel was going too fast or not?

A. I looked over the side several times while it was foggy. I looked over the side after I heard the steamer's whistle.

39 X Q. 350. You had the idea pretty thoroughly in your head that there might be a question as to your speed then, didn't you?

A. There always is in foggy weather. A man has to use his judgment as to his speed.

X Q. 351. When did you look specially, as you testified on direct examination, to see whether you should shorten sail or not?

A. I didn't consider that; no sir.

X Q. 352. But when did you look to consider the question? You testified that you looked over the side to see whether you should shorten sail; when did you do that—any particular time?

A. No particular time.

Q. 353. Mr. CARVER: You are a licensed master?

A. Yes, sir; I have a certificate of competency.
Q. 354. You have passed the board of examiners?
A. Yes, sir. I haven't my certificate with me. I didn't think it was necessary to bring it.
Mr. RUSSELL: Oh, I do not deny that he has one.

Deposition of Augustus Mullins.

BOSTON, *July* 31, 1894.

Direct examination by Mr. CARVER:

Q. 1. What is your full name?
A. Augustus Mullins.
Q. 2. Where do you reside and how old are you?
A. I reside in Liverpool, N. S.; thirty-four years, sir.
Q. 3. And what do you do for a living?
A. I follow the sea, sir.
Q. 4. How long have you been going to sea?
A. I have been going to sea twenty-nine or thirty years.
Q. 5. And you were the mate of the late schooner Golden Rule?
A. Yes, sir.
Q. 6. Where did you join the Golden Rule?
A. In Liverpool, N. S., sir.
Q. 7. When?
A. I joined her on the last voyage on the fourteenth day of May.
Q. 8. The fourteenth day of last May?
A. The 14th of this last May.
Q. 9. What was the rig of the Golden Rule?
A. Topsail schooner.
Q. 10. Did she have square sails on her foremast?
A. Yes, sir.
Q. 11. How many?
A. She had five.
Q. 12. Five square sails on her foremast?
A. No; four square sails.
Q. 13. Four square sails. How old was she?
A. One year, or about that.
Q. Were you her mate?
A. Yes, sir.
Q. 15. How many men did you have on board of her?
A. We had seven and one passenger; seven belonging to the ship.
Q. 16. Where was the schooner bound on her last voyage?
A. Bound for Boston.
Q. 17. Where from?
A. From Ponce, Porto Rico.
Q. 18. What was she loaded with?
A. Molasses.
Q. 19. When did she leave Ponce?

A. She left Ponce—let me see—July 8.
Q. 20. The eighth of July?
A. Yes, sir; the seventh or eighth; I don't just remember.
Q. 21. How long was she?
A. Her length of keel, sir?
Q. 22. Yes.
A. That I couldn't tell you.
Q. 23. About how long?
A. She was somewhere about in seventy, I think; seventy feet, length of keel.
Q. 24. Coming now to the nineteenth day of July, at what time was it that you went below on the night of the nineteenth of July?
A. I went below at twelve o'clock.
Q. 25. What was the condition of the weather at the time you went below?
A. It was getting hazy when I went below, sir. There was just a little fog rising.
Q. 26. On what tack was your vessel?
A. She was running on the starboard tack, sir,—running on the port tack, sir, the sails on the starboard side.
Q. 27. Did you or not have your lights set at that time?
A. We had all our side lights set.
41 Q. 28. And did you notice as to whether or not they were burning?
A. They were burning when I went below, sir.
Q. 29. What kind of lights did you have?
A. We had good lights, sir; regulation lights, they are called.
Q. 30. When did you next come on deck after you went below?
A. I came on deck about eight minutes to four.
Q. 31. And what was the occasion of your coming on deck?
A. I was called; it was my watch.
Q. 32. When you came on deck a few minutes before four, what was the condition of the weather then?
A. The fog was thick, sir.
Q. 33. Was there any fog signal used on board of your vessel?
A. There was, sir.
Q. 34. What kind of a fog signal was used?
A. We had a mechanical fog-horn.
Q. 35. And where was that located?
A. On the forecastle.
Q. 36. Forecastle head?
A. Yes, sir; forward.
Q. 37. When you came on deck did you hear any fog signal?
A. I did, sir.
Q. 38. What did you hear?
A. I hear a whistle to leeward.
Q. 39. Heard a whistle to leeward?
A. Yes, sir; to leeward.
Q 40. What was it?
A. I judged it to be the steamer.
Q. 41. On what tack was your vessel when you came on deck?

A. She was on the port tack, sir.
Q. 42. What was the wind?
A. The wind, I judged, was about southwest.
Q. 43. And how with reference to your vessel.—was she free or close-hauled?
A. She was free.
Q. 44. And how did the wind bear on your quarter?
A. It bore on the port quarter, beaft of the beam.
Q. 44. About how much beaft the beam?
A. Well it would be about three points beaft the beam.
Q. 46. What course was your vessel steering?
A. The course the man gave me was north by east half east.
Q. 47. Did you hear any fog signal on your vessel just after you came on deck?
A. I hear it; yes, sir.
Q. 48. What did you do when you went on deck?
A. I went forward.
42 Q. 49. Where?
A. On the forecastle head, sir.
Q. 50. Who did you find there?
A. I found August Williams.
Q. 51. And what was he doing?
A. He was on the lookout, sir.
Q. 52. You say that you heard a fog signal blown on your vessel?
A. Yes, sir.
Q. 53. How many blasts did you hear at a time?
A. Three, sir; three blasts.
Q. 54. And how often were they blown?
A. Well, they were blown, sir, a minute or a minute and a half apart.
Q. 55. That is, between the three sets of blasts, a minute or a minute and a half apart?
A. Yes, sir.
Q. 56. And you say that when you came on deck you went to the forecastle head?
A. I went to the forecastle head.
Q. 57. Was the man on the lookout relieved?
A. He was relieved; yes, sir.
Q. 58. At what time?
A. At eight bells, four o'clock.
Q. 59. Who went on the lookout at that time?
A. William Wilson.
Q. 60. And what did he do on the lookout?
A. I was hauling the log in, and he went forward and blew the horn.
Q. 61. You say that when you first came on deck you heard the blast of a steam whistle? How did it bear from your vessel?
A. It was about two points, sir, on the starboard bow, or two and a half.
Q. 62. How far distant, should you judge?

A. I couldn't tell, sir.

Q. 63. How often was your fog signal sounded?

A. Well, about every minute or minute and a half, or every time we heard the other.

Q. 64. After this other man went and relieved the man on the lookout, did you hear the fog signal on your vessel?

A. Yes, sir; I did.

Q. 65. And at what intervals?

A. Three blasts.

Q. 66. Yes; but how long between the three blasts?

A. Well, we blowed oftener then, because the steamer was blowing oftener.

Q. 67. Did you afterwards go forward?

A. I went forward after I hauled the log in, before the wheel was relieved.

Q. 68. Where did you go?

A. I went to the forecastle head, sir.

43 Q. 69. And tell us what took place after that.

A. Well, I took the horn; I blew the horn myself then, and Wilson kept a lookout.

Q. 70. And what else did you see or hear?

A. The next I heard was Wilson said he saw her coming.

Q. 71. Did you look?

A. I looked then.

Q. 72. What did you see?

A. I saw a steamer.

Q. 73. And how far from you should you say she was when you saw her?

A. Well, as near as I could judge, I should say she was four or five times the length of her. She might have been more.

Q. 74. Four or five times whose length?

A. The length of the steamer.

Q. 75. Did you notice anything about the steamer as you watched her?

A. I see her light.

Q. 76. What light did you see?

A. I see the masthead light.

Q. 77. Did you see any other lights?

A. I didn't take notice of the side lights, but I see her masthead light.

Q. 78. What did you do?

A. I blew the horn.

Q. 79. Did you say anything to your captain?

A. No.

Q. 80. Who was on deck at that time?

A. The captain, and the other watch had gone below.

Q. 81. How many men were on deck?

A. There were four with the captain, one man at the wheel, and one on the lookout.

Q. 82. Did you notice anything with regard to the speed of the steamer?

A. Yes; when she got close I noticed that she was altering her course.

Q. 83. Altering her course in which way?

A. She was putting her wheel to port, she was porting her helm; her head was going to starboard.

Q. 84. Did you notice anything about how fast she was going through the water?

A. Well, I noticed by the way she was going, she was going about ten knots, I should say.

Q. 85. Did you notice anything about water around her bows?

A. Yes, sir.

Q. 86. What did you notice?

A. I noticed that there were waves ahead of her.

Q. 87. Did the steamer strike your vessel?

A. She did, sir.

44 Q. 88. Where did she strike you?

A. Right beaft the anchor, by the cathead.

Q. 89. At what angle?

A. Six points.

Q. 90. Angling forward or astern?

A. Astern.

Q. 91. What did she do?

A. She cut us right through.

Q. 92. Cut the bow right off?

A. Cut the bow right off.

Q. 93. Did you notice anything about your lights?

A. I noticed the starboard light was burning.

Q. 94. When?

A. When I was on the forecastle.

Q. 95. Before the collision?

A. Before the collision; yes, sir.

Q. 96. After four o'clock, or before four o'clock?

A. After four o'clock; after the wheel was relieved.

Q. 97. How was it burning?

A. Burning bright.

Q. 98. As to whether or not your fog-horn was blown regularly after you came on deck?

A. It was, sir, because I blew it myself.

Q. 99. What would have been the result if the steamer had put her wheel to starboard instead of to port, in your opinion?

A. Well, she might possibly have cleared us. It is hard to tell.

Q. 100. Did you hear the captain of your vessel say anything?

A. I heard him tell the man to steer her straight.

Q. 101. Was there or was there not anything that could have been done aboard of your vessel different from what was done to prevent a collision?

A. I don't see as there could, sir.

Q. 102. And how far were you from the steamer when she struck you,—that is, how far from the bow were you?

A. I was about twenty feet.

Q. 103. You ran aft?

A. Yes, sir; I kept going aft.

Q. 104. What was done after she struck you?

A. Well, we swung alongside, and they hove over the ropes, and we got off of her.

Q. 105. Did your vessel sink?

A. She sunk right down forward; yes, sir. I went to the main deck, and cut the boat adrift first, to try to get her out.

Q. 106. Were you able to save anything?

A. I saved nothing only what I stood in.

45 Q. 107. Was anybody else aboard able to save anything?

A. Nobody saved anything at all, sir.

Q. 108. You went aboard of the steamer, you say?

A. Yes, sir.

Q. 109. What did you do when you got aboard of the steamer?

A. I didn't do anything. I went up on deck.

Q. 110. Did you have any conversation with anybody aboard of the steamer?

A. None in particular; no, sir.

Q. 111. Where did you go on the steamer?

A. I went into the saloon.

Q. 112. Where did the steamer take you, I mean?

A. She took us to Savannah.

Q. 113. And you came from Savannah here?

A. Came from Savannah here.

Q. 114. Did you lose any personal effects?

A. Yes, sir; I lost all my clothes.

Q. 115. Have you a list of the personal effects you lost?

A. Yes, sir.

Q. 116. Have you got it with you?

A. Yes, sir (producing a paper and passing the same to Mr. Carver).

Q. 117. And are those fair prices that you have put opposite the articles?

A. Yes, sir.

Q. 118. And the condition that the clothes were in——

A. Yes, sir.

Mr. RUSSELL: What is the total?

Mr. CARVER: One hundred and thirty-two dollars and seventy cents.

(The paper produced is marked "Exhibit A, R. H. J.," and annexed to this deposition.)

Q. 119. Where did this collision take place?

A. Off of Nantucket lightship, sir; off the South Shoal lightship, they call it.

Cross-examination by Mr. RUSSELL:

X Q. 120. Is this list in your handwriting?

A. No, sir; I worded it, but it was wrote for me.

X Q. 121. Who wrote it?

A. The captain.

X Q. 122. When?

A. This morning, sir.

46 X Q. 123. Where?

A. Here—down at the office.

X Q. 124. This is your memory of what you had on board?

A. Yes, sir.

X Q. 125. Does it include anything that you had on when you went aboard the steamer?

A. No, sir; no, sir; I guess not.

X Q. 126. What did you have on when you went on board the steamer?

A. I had on a pair of duck pants, a pair of shoes and overshoes, a cotton singlet, a cotton shirt, and a coat and a cap, and an old coat with the elbows out.

X Q. 127. Where did you have your other clothing?

A. There was some in my chest, sir; and some in my clothes bag and some was hanging up in my room.

X Q. 128. Did you sleep in the cabin?

A. I slept in a state-room off of the main cabin, sir.

X Q. 129. What is the tonnage of the Golden Rule?

A. One hundred and ninety-nine tons, sir.

X Q. 130. What is she built of,—mixed wood?

A. Mixed wood.

X Q. 131. Where was she built?

A. In Liverpool, N. S.

X Q. 132. And you say about a year ago?

A. About a year up to the 20th,—she was launched in June, I think; some time the latter part of June she was launched.

X Q. 133. Do you know what she cost to build?

A. I couldn't tell you, sir.

X Q. 134. When did you first join her?

A. I joined her the twenty-first day of last July, in Liverpool, but I was discharged every voyage.

X Q. 135. That is July, 1893?

A. 1893; yes, sir.

X Q. 136. And did you make every voyage in her after that?

A. I made every one in her after that, sir.

X Q. 137. And what was the general nature of her voyages?

A. Well, she was three months, ten weeks—one voyage seven weeks and two or three days.

X Q. 138. Where, to the West Indies?

A. To the West Indies; and one voyage we made from Apalachicola, Fla., with hard pine, to Cuba.

47 X Q. 139. Was that the last voyage before this voyage to Porto Rico?

A. No, sir; that was the second voyage she made.

X Q. 140. What sail does she carry?

A. The names of them, sir?

X Q. 141. Yes, sir.

A. She carries a mainsail, gaff-topsail, a fore-and-aft foresail, and

square sail, lower and upper topsail, topgallant-sail, stem staysail and three jibs.

X Q. 142. Was she carrying all sail at the time of the collision?

A. No, sir; there was one of the sails in at the time of the collision.

X Q. 143. Which was that?

A. It was half of the square sail, sir; the square sail was in two pieces.

X Q. 144. With that exception she was under full sail?

A. Yes, sir.

X Q. 145. How much wind was there blowing?

A. Well, there was not a very strong breeze. The wind was light at the time.

X Q. 146. Well, how strong a breeze?

—. Well, there might have been a six-knot breeze, or thereabouts; perhaps a little better.

X Q. 147. Do you think she was going ten knots?

A. I think she may have been going six knots.

X Q. 148. And she may have been going faster?

A. She may not have been going so fast.

X Q. 149. Did you have out any log?

A. Yes, sir.

X Q. 150. Did you look at it at any time?

A. I hauled it in at about eight minutes to four, sir.

X Q. 151. And what did it show?

A. It showed for the last four hours about seven knots an hour.

X Q. 152. You hauled it in at four o'clock in the morning?

A. Yes, sir.

X Q. 153. Just before the collision?

A. Yes, sir.

X Q. 154. And it showed that during the night she had been making about seven knots?

A. Seven knots, sir; that is, in the middle watch, from twelve o'clock to four.

X Q. 155. And during all that time you had the same sail up?

A. Yes, sir.

X Q. 156. When was this half of the square sail taken in?

A. It was taken in that evening.

X Q. 157. At what time?

A. I think at eight o'clock.

48 X Q. 158. Was the tide working at the time of the collision?

A. I can't tell you exactly about that, sir, but there is most always a westerly current there, on that coast.

X Q. 159. Had you made any land during the day or evening?

A. No, sir.

X Q. 160. Did you make the South Shoal light-ship?

A. No, sir; we hadn't made it.

X Q. 161. How did you know where the collision took place?

A. Well, it is my best judgment, sir, by dead reckoning. I judged it was pretty near the South Shoal light-ship.

X Q. 162. What was the last land that you passed before the collision?

A. The last land that we passed, that we left, was Porto Rico.

X Q. 163. You hadn't seen a thing on the whole voyage, then, in the way of headland?

A. No, sir; no shore.

X Q. 164. And hadn't seen any light?

A. No, sir; no shore light.

X Q. 165. I mean shore light, light-house.

A. No, sir.

X Q. 166. And you had been out from Porto Rico about ten days?

A. Ten or twelve days. We were out twelve days.

X Q. 167. And you came on deck just before the collision?

A. Yes, sir; before four o'clock.

X Q. 168. And did that captain stand his watch?

A. Yes, sir; in bad weather he did; during thick weather he stood his watch.

X Q. 169. Did he stand his watch from eight o'clock to twelve?

A. It was my watch from eight o'clock to twelve.

X Q. 170. Oh, yes; and you turned in at twelve o'clock. Did the captain stand watch from twelve o'clock to four?

A. He came on deck, and I went below.

X Q. 171. And when you came on deck at four o'clock you found him there?

A. He came on deck—yes, he was on deck at four o'clock.

X Q. 172. When you turned in at twelve o'clock was it thick?

A. No, sir; it was not.

X Q. 173. You don't know when it began to get thick, then?

A. No, I don't know only what I was told.

X Q. 174. Did you hear the fog-horn after you turned in?

49 A. They gave it a few blasts. It was hazy, a little hazy, after I went below.

X Q. 175. So that you blew the fog-horn?

A. They gave it a few blasts, and then it cleared up beautifully, they say.

X Q. 176. Was there a moon that night?

A. Yes, sir.

X Q. 177. When did you first hear the fog-horn after you turned in?

A. After I was called in the morning, sir.

X Q. 178. Who called you?

A. Fred—I can't remember him. We always had him as a boatswain.

X Q. 179. Did he tell you anything about the horn when he called you?

A. Yes, sir; he told me when he called me.

X Q. 180. Did he say where he heard it?

A. He said a little on the lee bow, up a little ahead of us; he couldn't tell.

X Q. 181. Did you have to dress then?

A. All I had to do was to slip on my shoes and hat.

X Q. 181½. And then you went up the companionway?

A. Yes, sir.

X Q. 182. And came out on the quarter-deck?

A. Yes, sir, the after part of the cabin.

X Q. 183. And then you went forward?

A. Yes, sir.

X Q. 184. Did you go forward immediately, or wait a while before you went forward?

A. No, sir; I went right forward.

X Q. 185. Did you know what you were to do when you came on deck, any special thing?

A. No, sir; no special thing, only to see that the fog-horn was properly blown.

X Q. 186. When you got up on deck had the man at the wheel been relieved?

A. No, sir.

X Q. 187. Did you look at the compass to see how he was steering?

A. No, sir; not then.

X Q. 188. You walked forward?

A. I went forward.

X Q. 189. And you walked forward?

A. I walked forward to the forecastle head.

X Q. 190. At that time did you hear the steamer?

A. I heard the steamer after I got there.

X Q. 191. How many times did you hear the steamer's whistle before the collision?

A. Well, now, that I can't answer, how many times.

50 X Q. 192. A good many?

A. Yes, sir; We heard her quite often when she got close to us. Then she blowed oftener than she did before.

X Q. 193. And every time she blew, you blew?

A. We answered her.

X Q. 194. What was her blast?

A. Her blast was one long blast.

X Q. 195. Every two minutes, or more frequently?

A. Well, there were not two minutes between the last blasts she made. At first they were a little longer, but after she heard our horn I suppose she blowed oftener.

X Q. 196. How long do you think it was from the time you got up on deck until the vessels came together?

A. I should say it was ten minutes or a little over; twelve minutes, perhaps.

X Q. 197. You didn't time it by any watch?

A. I didn't time it; no sir. That is as near as I can judge.

X Q. 198. Do you know where this fog-horn came from?

A. Which fog-horn?

X Q. 199. The fog-horn on your vessel.

A. It came out of a ship, sir.

X Q. 200. Had it been on board all the time that you had been on the vessel?

A. It had been on the vessel as long as I had been on her, sir.

X Q. 201. How was it blown?

A. It was blown—it worked just like that (illustrating), a pump. There was a handle on it, and you hauled it up and shoved it down.

X Q. 202. Where did you put it?

A. I lashed it right against the windlass on the forecastle deck.

X Q. 203. Where was the mouth,—down?

A. No, sir; the mouth was up. There was a long tube to it.

X Q. 204. You mean it went right straight up vertically?

A. It went up about that high (illustrating).

Mr. CARVER: About two feet.

The DEPONENT: And then it turned. It was in two pieces.

X Q. 205. And, working it, you stood up?

A. Working it you stood up on the topgallant forecastle.

X Q. 206. With one hand, or both hands?

A. Both hands.

51 X Q. 207. And how high would the mouth of the horn be?

A. The mouth of the horn would be about four feet or four feet and a half above the forecastle deck.

X Q. 208. And how high was the forecastle deck from the water line?

A. I think it was about ten feet, sir; as near as I could judge.

X Q. 209. What was your draught of water?

A. Our draught of water forward was ten feet.

Direct examination resumed by Mr. CARVER:

Q. 210. How was the wind after four o'clock, when you got on deck, in comparison with the wind at twelve o'clock,—was it stronger or——

A. There was not as much as there was at twelve o'clock.

Q. 211. Now, in regard to this fog-horn——

A. It was very smooth.

Q. 212. What sort of a sound did the fog-horn give?

A. Gave a good blast, a good sound.

Q. 213. A loud sound?

A. Yes, sir; as good as you ever hear from a hand horn.

Q. 214. Was your vessel light or deep loaded?

A. She was deep loaded, sir.

Q. 215. She lay pretty well down in the water?

A. Pretty well aft.

Q. 216. Was she heeling over any when you came on deck?

A. No, sir; she was standing perfectly straight.

Cross-examination resumed by Mr. RUSSELL:

X Q. 217. What became of the man who was relieved on the look-out at four o'clock?

A. He went into the forecastle, sir.

X Q. 218. Was he in the forecastle at the time of the collision?

A. Well, now, I couldn't tell you whether he was or not, sir.

X Q. 219. Did he make any report of the vessel to you when you went forward?

A. On the lookout?

X Q. 220. Yes.

A. Yes, sir; he did because I got forward before he was relieved.

52 X Q. 221. Then when you got forward, before he was relieved, where was the man who relieved him?

A. He hadn't come on deck.

X Q. 222. He came on deck before the collision, evidently?

A. Oh, yes, sir, because the wheel was relieved. We struck eight bells before the collision.

X Q. 223. When did this man come on the lookout,—this man that was there at four o'clock?

A. He came at four o'clock, eight bells.

X Q. 224. How long had you been there before that?

A. Well, I had been turned out and was called forward at about ten minutes to four, and I just slipped on my clothes and went forward to see that the lookout was all right, and I blowed the horn and then went aft, and I came back on the forecastle head again and blowed it; I blowed it twice.

X Q. 225. Where did you go after you blew it the first time?

A. I went aft and hauled in the log.

X Q. 226. Was it blown at all before you returned?

A. It was. I told him not to make any mistake whatever.

X Q. 227. How many times did he blow it?

A. I couldn't tell you. He blowed it every time he heard the steamer.

X Q. 228. And then you came back, and you took it?

A. I took it from him again.

X Q. 229. Why did you do that?

A. Because I could blow it louder than he could, I thought.

X Q. 230. And why?

A. Because it held considerable wind, and I was stronger, and I knew just how to blow it, and blow it properly.

X Q. 231. Does the volume of sound depend on the strength of the man that blows it?

A. No, sir, not altogether. They can't miss blowing it, but I thought that I could make it sound louder than he could.

X Q. 232. Did you make it sound louder than he did?

A. I thought I did.

X Q. 233. When this man came, did he blow the horn or you?

A. Wilson?

X Q. 234. Yes.

A. He blowed the horn when he first came.

53 X Q. 235. Did you blow it afterwards?

A. Afterwards I blew it again.

X Q. 236. So that you thought you could blow it louder than Wilson, also?

A. Yes, sir; because I was more accustomed to the horn than they were.

X Q. 237. While you were blowing the horn, what were they doing?

A. They were looking out, sir; looking forward.

X Q. 238. Did the man whose watch was up at four o'clock leave before Wilson relieved him?

A. No, sir; he didn't leave before Wilson relieved him.

X Q. 239. And during all that time you were blowing the fog-horn?

A. Yes, sir. I don't know exactly how many times, but all the time I was on the forecastle head I blowed it.

X Q. 240. Did you blow the fog-horn up to the time you could see the steamer's masthead light?

A. Yes, sir. I was blowing it when I saw the steamer. I was blowing it when Wilson said he could see her.

X Q. 241. How far off was she when you saw her?

A. I should say she was four or five times the length of us.

X Q. 242. What do you call her length?

A. Her length is about two hundred feet, I suppose, or two hundred and fifty. I could see the steamer when she was off about four or five hundred yards, as near as I could judge. I couldn't exactly see her length, or the way she was coming.

Direct examination resumed by Mr. CARVER:

Q. 243. Were you aboard of the steamer till she went to Savannah?

A. Yes, sir.

Q. 244. Do you know what the full speed of the steamer is?

A. I think they told me thirteen and a half or fourteen knots; I don't just remember, but it was over thirteen.

Q. 245. Was it foggy after you got aboard of her?

A. A little while, but not long.

Q. 246. How did she go when it was foggy?

(Objected to.)

A. I don't just exactly know, for I didn't go on deck to see what the speed was. I was not accustomed to her, and I was down below; I went to wash myself.

54 (MEMORANDUM.—Exhibit A, R. H. J., annexed to this deposition, is omitted in printing this record.—John G. Stetson, clerk.)

Deposition of William Henry Abbott.

BOSTON, *July* 31, 1894.

Direct examination by Mr. CARVER:

Q. 1. What is your full name?

A. William Henry Abbott.

Q. 2. Where do you live, and how old are you?
A. I live in Lockport, N. S.; I am forty-five years old.
Q. 3. How long have you been going to sea?
A. I have been going about thirty-two years, and laid off about two years out of that.
Q. 4. And you were aboard of the schooner Golden Rule at the time she collided with the Chattahoochee?
A. I was.
Q. 5. Where did you join her?
A. Liverpool, N. S.
Q. 6. When?
A. Well, I joined her the third day of March one trip, and this last trip I joined her the fifteenth day of May.
Q. 7. And she was bound on a voyage at this time from Ponce to Boston?
A. Ponce to Boston.
Q. 8. Loaded with sugar and molasses?
A. Sugar and molasses.
Q. 9. What day was it that the collision took place?
A. The 20th.
Q. 10. What was your position aboard of her?
A. Cook and steward.
Q. 11. What time did you get up that morning?
A. Ten minutes to four o'clock.
Q. 12. Ten minutes before four?
A. Yes, sir.
Q. 13. And did you come out on deck?
A. I came out on deck.
Q. 14. What was the weather?
A. The weather was moderate and foggy.
Q. 15. How was the sea?
A. Well, the sea was not very much.
Q. 16. Well, how was your vessel sailing, on what tack?
A. She was on the port tack.
55 Q. 17. And how was the wind,—free, or was she close-hauled?
A. The wind was free. I should judge about two points abaft the beam; somewhere along there.
Q. 18. Did she have any lights set that night?
A. Lights?
Q. 19 Yes.
A. Burning lights?
Q. 20. Did she have any side lights set that night?
A. Yes, sir.
Q. 21. What time?
A. I put them up, or saw that they were put up, at eight o'clock that evening.
Q. 22. What kind of lights were they?
A. As good as were ever aboard a vessel.
Q. 23. Who had charge of them?
A. I had charge of them myself.

Q. 24. You say at ten minutes of four you came on deck?
A. Yes, sir.
Q. 25. Did you hear any whistle from another vessel?
A. Yes, sir; just as I got on deck I hear a whistle, a steamer's whistle.
Q. 26. And how did it bear from your vessel?
A. As nigh as I could judge, about six points on the beam.
Q. 27. On which side?
A. On the starboard side.
Q. 28. Was there any fog-horn sounded on your vessel?
A. There was.
Q. 29. How many blasts were blown at a time?
A. Three blasts.
Q. 30. And how long between the blasts?
A. As near as I could judge, a minute or a minute and a half.
Q. 31. Did that continue up to the time of the collision?
A. Continued right up to the time of the collision.
Q. 32. About what time did this collision take place?
A. As near as I can say, about four o'clock, or it may be a minute or so before or after.
Q. 33. Did you go below after you came on deck?
A. No, sir.
Q. 34. Did you see your lights at all——
A. I saw both lights burning.
Q. 35. What time did you see them?
A. Not more than a minute before the steamer struck.
Q. 36. Did you see both lights?
A. I saw both lights.
56 Q. 37. And how were they burning?
A. Fine.
Q. 38. Did you hear anything said by your lookout after you came on deck?
A. The mate said to the captain, when the steamer was near to us, "Better luff," and the captain says, "No; keep her on the direct course."
Q. 39. The captain said keep her on a direct course?
A. Yes, sir.
Q. 40. Who did he say that to?
A. He said it to the man at the wheel.
Q. 41. Did your vessel change her course at all?
A. No, sir, she didn't.
Q. 42. Did you see the steamer after you heard the report of the lookout,—did you see the steamer yourself?
A. Just as the lookout said, "There she is," I saw the steamer's light.
Q. 43. What light did you see?
A. The masthead light.
Q. 44. And then did you see the steamer after that?
A. I saw the steamer just about the same time.
Q. 45. Was it light then?
A It was gray daylight.

Q. 46. How far off should you judge the steamer was?
A. Well, about five or six times her length.
Q. 47. Did you say anything?
A. I said to the captain, "She is coming right on us, and I don't think she will clear us."
Q. 48. Did he reply to that?
A. No, sir.
Q. 49. Where were you standing at this time?
A. I was standing on the poop.
Q. 50. Did you notice anything about the steamer after you saw her?
A. No, sir; I did not.
Q. 51. Did you see whether she had changed her course or not?
A. I thought she changed to starboard.
Q. 52. How fast do you think the steamer was coming after you saw her?
A. Well, I should judge she was going ten or eleven knots, as near as I could judge.
Q. 53. Could you see anything about her bow? Did you see any water about her bow?
A. Oh, yes, sir; plenty of it.
Q. 54. What did you see?
A. I saw what you call the foam in her teeth.
Q. 55. A bone in her teeth?

57 Mr. RUSSELL: Foam in her teeth, he said.

A. Foam in her teeth.
Q. 56. Do you mean a large wave round her bow?
A. Yes, sir.
Q. 57. Did you see the steamer when she struck you?
A. I saw the steamer when she struck us.
Q. 58. Where did she strike you?
A. I saw her right abaft the starboard anchor.
Q. 59. And what did she do?
A. She came in beaft the starboard anchor, and went to the port rail, cutting her right in two.
Q. 60. About what angle did she strike?
A. She struck about square, I think, when she struck; it may be a little forward.
Q. 61. How did she tail,—did she tail aft or forward?
A. She slewed around, and they came together.
Q. 62. Did she cut the bow right away?
A. As far as I could judge she cut her completely in two, as far as I could judge.
Q. 63. Do you know how wide your vessel is?
A. She was twenty-nine or thirty feet.
Q. 64. Did your vessel change her course at all?
A. I couldn't say, sir; I don't think she did.
Q. 65. And you were taken aboard of the steamer?
A. I was taken aboard of the steamer.
Q. 66. How did you get aboard?

A The man that was in her this morning turned a rope round me and hauled me up.

Q. 67. Were you able to save any of your personal effects?

A. Nothing excepting a pair of pants, and they helped me to a hat and a pair of shoes after I got aboard the steamer.

Q. 68. Have you made a list of the things you lost?

A. Yes, sir.

Q. 69. Have you got that list with you?

A. Yes, sir.

Q. 70. Will you let us take it?

A. Yes, sir (producing the same).

Q. 71. Are these the things you had aboard?

A. Yes, sir.

Q. 72. And are those fair prices for them?

A. Yes, sir.

Mr. CARVER: It amounts to $103.40, Mr. Russell.

(The paper is marked "Exhibit B, R. H. J.," and annexed to this deposition.)

58 Q. 73. Was there anything that could have been done on your vessel to prevent the collision, after you came on deck?

A. I don't think there could.

Q. 74. Was there anything that could have been done aboard of the steamer?

A. I think if she had put her helm to port instead of starboard she would have cleared our stern; that is, as far as I can judge.

Q. 75. You got aboard of the steamer, and were carried to Savannah?

A. Yes, sir.

Q. 76. And you have come from Savannah here?

A. Have come from Savannah here.

Q. 77. Did you have any conversation with anybody aboard of the steamer about the collision?

A. No, except the second or third assistant.

Q. 78. Second or third assistant what?

A. Second or third assistant engineer.

Q. 79. Where was it that you had this conversation?

(Objected to.)

A. In his room.

Q. 80. What did he say?

A. He showed me the way they worked—he said they reversed under a full head of steam.

Q. 81. Anything else?

A. He said they had to do it sometimes, to reverse under a full head of steam, and I asked him if they were not apt to break a shaft, and he said yes, but still they had to do it sometimes.

Q. 82. Did he say anything about how fast the vessel was going?

A. Not anything.

Q. 83. Did you have any conversation with anybody else aboard of her about the collision?

A. No, sir.

Q. 84. How often do you think your horn was sounded from the time you came on deck to the time of the collision?

A. I think about five times; I won't swear whether it was over or under.

Q. 85. How long an interval between the blasts?

A. About a minute or a minute and a half, up to the time of the collision.

Q. 86. And how many times do you think the steamer sounded her whistle after you came on deck?

A. I shouldn't like to say.

Q. 87. That is, they alternated,—first they would blow, and
59 then you would blow?

A. Every time they would blow we would answer.

Q. 88. What kind of a fog-horn was it that you had,—what sort of a sound did it give?

A. As good as any I ever heard.

Q. 89. Do you know what became of the man at the wheel?

A. We left him there, and he was supposed to go across to Rotterdam, I think. He came to Savannah with us.

Q. 90. And where did he go from there?

A. To Rotterdam, I think he shipped. I am not certain. They thought he shipped that day for Rotterdam.

Q. 91. Do you know what his name was?

A. I don't know. They called him Brod. That is all I know.

Q. 92. Where are the other men that were aboard of your vessel?

A. One man is either in Savannah or New York; I can't say.

Q. 93. Where are the others?

A. On board of the Chattahoochee.

Q. 94. Employed aboard the Chattahoochee?

A. Yes, sir.

Cross-examination.

By Mr. Russell:

X Q. 95. Who made out this list?

A. There was a man who assisted me up to the home there last night, up at the mariners' house. Of course I can't write very well myself with one hand.

X Q. 96. Who fixed the prices?

A. I fixed the prices myself.

X Q. 97. How did you get at them?

A. As near as I could judge, that is what they cost me.

X Q. 98. How old were they?

A. Well, they were brand new; some I never had on, and some were a year and a year and a half old.

X Q. 99. How old were your two suits of clothes?

A. Brand new; never had them on.

X Q. 100. Where did you get them?

A. At Barbadoes, West Indies.

X Q. 101. What were they made of?

A. Woollen goods.

X Q. 102. When did you turn in the night before the collision?

A. I turned in at eight o'clock, as soon as I saw the lights put up.

X Q. 103. That is the last duty you have to perform on board ship?

A. That is the last duty I have to perform.

60 X Q. 104. Did you put the lights up, or merely put them up on deck?

A. I bring them on deck, and see that the watch on deck put them at their place.

X Q. 105. Is four o'clock your regular time for turning out?

A. I generally turn out at one bell, ten minutes to four, since I have been cook.

X Q. 106. What do you mean by one bell?

A. Ten minutes to four; and I go on deck at eight bells.

X Q. 107. Do you have any duty on deck at that time?

A. I had to go to work and get coffee for the watch on deck.

X Q. 108. When you got on deck could you hear the steamer's whistle?

A. I could hear the steamer's whistle. It was not very loud, but I could hear it when I got on deck.

X Q. 109. And that led you to keep watching it?

A. Yes; I was just aft of the forecastle-house, and I watched.

X Q. 110. You didn't perform any duty as cook,—you were merely watching?

A. I had everything ready; I had everything ready over night and had the fire all built, and only had to just step in the galley and light the fire with a match.

X Q. 111. Did you go in there before the collision?

A. I had been in, and was standing by the forecastle door.

X Q. 112. And after you heard the steamer you went into your galley?

A. No, sir; not after I heard the steamer.

X Q. 113. Didn't you hear the steamer as soon as you got on deck?

A. Yes, sir; after I came out.

X Q. 114. What did you do after you first heard the steamer,—did you go into the galley?

A. Not after that.

X Q. 115. What do you mean by "after that"? Did you go in at all after you came on deck?

A. I came to the galley, and I heard the whistle, and I came out, and I stood there, to see the steamer.

X Q. 116. You came on deck and went into the galley, and lighted your fire, and then came out on deck?

A. Yes, sir.

X Q. 117. How long were you in the galley?

A. I was not in there over a minute and a half—no more.

X Q. 118. You heard the steamer's whistle just as you went into the galley?

A. Yes, sir.

61 X Q. 119. And then you came out?
A. Yes, sir.
X Q. 120. And then you heard it after you came out?
A. Yes, sir.
X Q. 121. How long did you think you heard it after you did come out?
A. From the time I came out until I did hear it?
X Q. 122. Until the collision.
A. Well, it was not long. I am not prepared to say.
X Q. 123. How many blasts do you think you heard after you came out of the galley until the collision took place?
A. I can tell you pretty well.
X Q. 124. Half a dozen?
A. No, sir; I didn't hear any more than three after I came out of the galley. I heard about five altogether, I think.
X Q. 125. Did you hear it blown while you were in the galley?
A. It didn't blow while I was in the galley.
X Q. 126. Then you heard it twice before you went into the galley?
A. I just stepped to the galley door, and lighted the fire with a match, and then came out again.
X Q. 127. How far is the galley from the forecastle deck?
A. It is part of the forecastle.
X Q. 128. Well, how far is it from your entrance to the galley to where the lookout stands?
A. Between twenty and twenty-five feet.
X Q. 129. Did you go away forward when you came out of the galley?
A. No, sir; I didn't.
X Q. 130. How far forward did you go?
A. I didn't go forward of the forecastle-house.
X Q. 131. And you were there when the vessels came together?
A. No, sir; I went aft then on the poop.
X Q. 132. You were aft when the vessels struck?
A. I was on the poop.
X Q. 133. Was there any one forward when the steamer struck you?
A. There was, forward of the forecastle-house.
X Q. 134. Was there any one forward of the forecastle-house, or on the forecastle-house, at the time of the collision?
A. No, sir; not on the forecastle-house.
62 X Q. 135. Did you get on deck before or after the mate?
A. I came on just after him.
X Q. 136. Where was he when you got to the galley?
A. He was on the forecastle.
X Q. 137. And where was the captain?
A. I don't know for certain where the captain was. He was on deck somewhere, but I can't say what part.
X Q. 138. Did you notice the man at the wheel at all?
A. I didn't. The man who was at the wheel——
X Q. 139. And you didn't notice how fast you were going?

A. Well, she was going between five and six knots, I thought.
X Q. 140. What made you think so?
A. Well, the wind was light.
X Q. 141. You didn't see the log?
A. Oh, no, sir; I didn't see the log.
X Q. 142. You had all sails set except one-half of the square sail?
A. Yes, sir.
X Q. 143. And you had the wind abeam?
A. Well, it was a little beaft the beam.
X Q. 144. Abaft the beam?
A. Yes, sir.

(MEMORANDUM.—Exhibit B, R. H. J., annexed to this deposition, is omitted in printing this record.—John G. Stetson, clerk.)

Deposition of William C. Wilson.

BOSTON, *Aug.* 1, 1894.

Direct examination by Mr. CARVER:

Q. 1. What is your full name?
A. William C. Wilson.
Q. 2. Where do you reside, and how old are you?
A. I was born in Cow Bay, sir, Cape Breton.
Q. 3. Do you live there now?
A. Yes, sir.
Q. 4. How old are you?
A. Twenty-five.
Q. 5. How long have you been going to sea?
A. I first started to go to sea in 1890.
Q. 6. Were you a member of the crew of the schooner Golden Rule?
A. Yes, sir.
63 Q. 7. When did you ship on board of her?
A. I signed on the articles on the fourteenth day of May, in Halifax.
Q. 8. And on what voyage was she when she was lost?
A. We went from Liverpool, N. S., to Barbadoes, West Indies, and from Barbadoes to Ponce, Porto Rico, and we were on the way from Ponce to Boston when we were cut down.
Q. 9. And you were loaded with a cargo of sugar and molasses?
A. Molasses, sir.
Q. 10. You were an able seaman aboard of her?
A. Yes, sir.
Q. 12. Whose watch were you in?
A. The mate's watch, sir; port watch.
Q. 12. What time did you come on deck the morning of the collision?
A. Four o'clock, sir.
Q. 13. And what time did you wake up that morning?
A. I was called at ten minutes to four, sir.

Q. 14. And what did you do then?

A. I went on the forecastle deck, sir, and relieved the man on the lookout.

Q. 15. Now, what kind of a schooner was the Golden Rule?

A. She was a topsail schooner, square-rigged on her foremast.

Q. 16. Did you hear anything when you came on deck?

A. Yes, sir.

Q. 17. What did you hear?

A. I heard the steamer's whistle, sir.

Q. 18. How was the weather when you came on deck?

A. The weather was fair, sir; thick, foggy, and a moderate breeze of wind.

Q. 19. What time was it that you went below that night?

A. Went below at twelve o'clock, sir.

Q. 20. How was the weather then?

A. The weather was fine.

Q. 21. Was it foggy or clear?

A. No, sir; a little hazy; kind of hazy.

Q. 22. What did you do when you came on deck?

A. I went forward, sir, and I waited until I heard the steamer's whistle, and I blew the horn three blasts.

Q. 23. You say you went forward. Where did you go?

A. On the forecastle deck.

Q. 24. Who did you find when you got there?

A. August Williams.

64 Q. 25. Anybody else?

A. No, sir.

Q. 26. Where was the mate?

A. I don't know, sir; I couldn't say where he was then; he went aft, I suppose.

Q. 27. You say you relieved August Williams at the lookout?

A. Yes, sir.

Q. 28. Had you heard any fog-horn blown on your vessel before you got on the forecastle head?

A. Yes, sir.

Q. 29. How many times?

A. It blew twice, I think, sir, to the best of my knowledge; I think it was twice she blew.

Q. 30. On what tack was your vessel?

A. She was on the port tack.

Q. 31. And how was the wind—was she free, or close-hauled?

A. Free wind, sir.

Q. 32. Then how many blasts did you blow on the fog-horn?

A. Three blasts.

Q. 33. What kind of a fog-horn is this—is it a mouth horn, or a mechanical horn?

A. It is a mechanical horn, sir; you use a pump.

Q. 34. And is it a good horn?

A. Yes, sir; a pretty fair horn.

Q. 35. How often did you blow the horn after you——

A. I blew the horn three times, sir.

Q. 36. Did anybody else blow the horn while you were on the lookout?

A. Yes, sir; the mate came right after me, and when he came I told him there was a steamer blowing a whistle on the starboard bow, and he blew then; he answered.

Q. 37. Did he blow more than once—the mate?

A. Yes, sir.

Q. 38. How many times did he blow?

A. He blew the horn twice, sir; and he went to blow it the third time, and the steamboat struck us.

Q. 39. And you say that you heard the steamer's whistle regularly?

A. Yes, sir.

Q. 40. And how would you blow your horn with reference to the steamer's whistle?

A. I blew the horn three blasts after I heard the steamer's whistle.

Q. 41. And then you would hear it again, and blow it again?

A. Yes, sir; the mate blew it after that.

65 Q. 42. Did you see the steamer before she struck you?

A. Yes, sir.

Q. 43. Which way did she bear from you?

A. She was coming right for about our anchor, sir; between our anchors and our fore rigging.

Q. 44. Did you see whether or not she changed her course any,—that is, the steamer?

A. *You*, sir; she appeared to be swinging under her port helm.

Q. 45. Swinging to starboard?

A. Yes, sir.

Q. 46. How fast do you think the steamer was going when you saw her?

A. Well, I couldn't exactly say how fast she was going.

Q. 47. Give us your best judgment.

A. I suppose she was going somewhere about seven knots.

Q. 48. The steamer?

A. Yes, sir; somewhere about seven or eight knots.

Q. 49. Where did she strike you?

A. She struck us just aft of our anchor, sir.

Q. 50. And how did she strike you? She struck you at what angle,—was it a right angle?

A. I couldn't say exactly, sir.

Q. 51. Did she go through your vessel?

A. Yes, sir; she cut our bow right off.

Q. 52. Was her bow pointed towards your stern, or towards your bow?

A. Pointed towards our bow, sir.

Q. 53. Do you know what part of your vessel was cut off on the port side of where she cut off?

A. When she struck us the after part of the schooner swung around on the port side of the steamer; came right alongside of the port side of the steamer.

Q. 54. Did you hear the captain say anything aboard of your vessel?

A. Yes, sir.

Q. 55. What did he say?

A. I heard him say to keep her on her course.

Q. 56. Did you lose your personal effects?

A. Yes, sir.

Q. 57. Have you a list of them?

A. Yes, sir.

Q. 58. Will you produce the list?

A. Yes, sir.

(The deponent does as requested, and the list is marked "Exhibit C, R. H. J.," and annexed to this deposition.)

Mr. CARVER: The total is $71.80.

66 Q. 59. And are these fair prices for the things you lost, and the condition they were in?

A. Yes, sir.

Q. 60. You lost all your clothes, did you?

A. Yes, sir.

Q. 61. What do you think would have been the result if the steamer had put her helm to starboard instead of to port when you first saw her?

A. Well, she may have cleared us and she may not; I couldn't say; probably she may have.

Q. 62. Which way would she have gone then, across your bow or under your stern?

A. Across our stern.

Q. 63. When you first heard the steamer's whistle how did it sound from your vessel?

A. Well, sir, I should say it sounded somewhere about two points and a half or three points on her starboard bow, sir.

Q. 64. When you first saw the steamer how far off do you think she was from you?

A. Well, I should say she was five or six lengths of herself from us.

Q. 65. Did you notice any lights aboard of the steamer?

A. Yes, sir.

Q. 66. What lights did you see?

A. I saw her masthead light and her port light.

Q. 67. Did you see them before or after you saw the steamer?

A. After I saw the steamer.

Q. 68. Well, was it pretty light,—that is, was it light or dark?

A. It was just breaking day; between daylight and dark.

Q. 69. Did you have any lights set on your vessel?

A. Yes, sir.

Q. 70. Did you see them?

A. I saw the starboard light, sir; I didn't take notice of the port one.

Q. 71. How was the starboard light?

A. Our starboard light was burning bright, sir.

Q. 72. Was it a good light?

A. Yes, sir; a good light.
Q. 73. Where are you employed now?
A. Aboard of the Chattahoochee.
Q. 74. That is the steamer that ran into you?
A. Yes, sir.
Q. 75. How did you get aboard of the steamer?
A. I got up by a line, sir.
Q. 76. And did your vessel go down?
67 A. No, sir; she didn't go down; she went all under water except her quarter; her quarter stuck up out of the water.
Q. 77. And then you went to Savannah?
A. Yes, sir.
Q. 78. And you are still in her?
A. Yes, sir.

Cross-examination.

By Mr. RUSSELL:

X Q. 79. When did you sign articles on the Chattahoochee?
A. I haven't signed any articles yet, sir.
X Q. 80. Did you ship from Boston or from Savannah?
A. The day we sailed from Savannah the first assistant came to me and asked me if I wished to go to work till we got to Boston, and said I could stay by her if I wished.
X Q. 81. And what did you ship as?
A. Coal-trimmer.
X Q. 82. There were how many in the crew of the Golden Rule?
A. Seven, sir, and a passenger.
X Q. 83. And that made three in a watch?
A. Yes, sir.
X Q. 84. Did the captain stand watch?
A. Yes, sir.
X Q. 85. Your watch came on deck at four o'clock in the morning?
A. Yes, sir.
X Q. 86. And had it just come on deck when this steamer was made out?
A. She was made out about ten minutes after we came on deck, sir.
X Q. 87. What were you doing during those ten minutes?
A. I was on the lookout, sir.
X Q. 88. Was any horn blown before you heard the steamer?
A. Yes, sir.
X Q. 89. Who blew that?
A. While I was on deck I blew the horn once myself.
X Q. 90. I am referring to before four o'clock.
A. I relieved August Williams, and he was blowing the horn then, sir.
X Q. 91. You got on deck at four o'clock?
A. Yes, sir.

X Q. 92. And had any fog-horn been blown before you came on deck, that you heard?

A. Yes, sir; it had been blown twice or three times that I heard.

X Q. 93. Where did you come from when you came on deck?

A. Down in the forecastle.

68 X Q. 94. And down in the forecastle you heard the fog-horn?

A. Yes, sir.

X Q. 95. How long had you heard it before the collision—before you came on deck?

A. Ten minutes, sir.

X Q. 96. Then they began to blow the fog-horn, so far as you know, about ten minutes to four, or twenty minutes to four?

A. Ten minutes to four, sir.

X Q. 97. Were you awake before that?

A. No, sir.

X Q. 98. Did you come on deck as soon as you woke up?

A. No, sir; I sat in the forecastle till eight bells went, four o'clock.

X Q. 99. That is to say, you sat there from ten minutes to four to four?

A. Yes, sir.

X Q. 100. And was it then that you first heard the fog-horn that morning?

A. Yes, sir.

X Q. 101. And you heard it blown how many times before you went on deck?

A. Twice or three times; I couldn't exactly say which.

X Q. 102. And as soon as you got on deck you went right forward?

A. Yes, sir.

X Q. 103. And when you got forward you didn't see the mate?

A. No, sir.

X Q. 104. You don't know where he was?

A. No, sir; I couldn't say where he was.

X Q. 105. Did the mate return to the forecastle before you relieved Williams?

A. No, sir; he came up just after I got on the forecastle deck.

X Q. 106. Did Williams leave as soon as you got up on the deck?

A. Yes, sir.

X Q. 107. Where did Williams go—below?

A. I suppose so, sir; I couldn't say where he went.

X Q. 108. For how long a time did you stay there before the mate came forward?

A. I was not there more than a minute, sir, before he came.

X Q. 109. And during that minute did you hear the whistle of the steamer?

A. Yes, sir.

X Q. 110. Did any one tell you to blow the fog-horn when you went forward?

A. The man I relieved.

69 X Q. 111. What did he say to you?

A. He told me there was a steamer on our starboard bow, and he was blowing the horn.

X Q. 112. Had you heard the steamer before he told you that?

A. No, sir.

X Q. 113. Did you hear the steamer's whistle right after that?

A. Yes, sir; he blew the whistle as he was leaving the forecastle deck,—the man I relieved.

X Q. 114. And you took the fog-horn from him?

A. Yes, sir; I was listening then till I heard the steamboat, and when I heard her whistle I answered.

X Q. 115. How long do you think you listened before you heard her?

A. I should think between one and two minutes.

X Q. 116. And in the meantime Williams had gone out of sight?

A. Yes, sir.

X Q. 117. How does this fog-horn blow,—by pumping?

A. Yes, sir; you push the handle up and down.

X Q. 118. Do you get any sound out of it until you have the handle half way up?

A. When you haul the handle up it doesn't make any sound at all,—not until you shove it down.

X Q. 119. How far do you have to shove it down before it gives any sound?

A. It starts as soon as you begin to shove it down.

X Q. 120. And it sounds all the way down?

A. Yes, sir.

X Q. 121. How long a tube is it?

A. I should say about three foot; somewhere about that.

X Q. 122. And you think it begins to sound as soon as you press on it?

A. Yes, sir.

X Q. 123. When you came on deck all sail was set with the exception of one half sail?

A. Yes, sir; the lee side of our square sail.

X Q. 124. How large a sail is that?

A. I couldn't say, sir, how large it is.

X Q. 125. How fast do you think you were going?

A. Well, I don't know, sir, how fast she was going.

X Q. 126. How strong was the wind?

A. We had a good, nice breeze; a good wind, sir.

X Q. 127. Well, do you think you were going as much as
70 seven or eight miles?

A. She was going somewhere, I suppose, between six and seven miles; somewhere about there.

X Q. 128. You didn't notice the log that was over your rail?

A. No, sir; I never had anything to do with that, sir.

X Q. 129. Was any log book kept on board, do you know?

A. I couldn't say, sir.

X Q. 130. Have you had any talk with any one from the Chattahoochee about this collision?

A. Well, we have been talking about it off and on several times?
X Q. 131. Do you know Mr. James M. Barnard?
A. No, sir.
X Q. 132. Who has a light moustache,—the agent for the company here in Boston?
A. No, sir; I don't know him.
X Q. 133. Then you don't remember having any talk with him?
A. No, sir.
X Q. 134. Have you had any talk with the captain of the steamer?
A. No, sir.
X Q. 135. Now, after you had been blowing the fog-horn, why did the mate take it away from you?
A. I was listening for the steamboat, sir.
X Q. 136. So was he, wasn't he?
A. Yes, sir; but he was blowing the horn.
X Q. 137. Why did he take it from you?
A. I don't know, sir.
X Q. 138. What did he say when he took it?
A. He said he would blow the horn for a couple of blasts.
X Q. 139. Did he blow it louder than you did?
A. I don't know, sir, as he blowed it any louder.
X Q. 140. Did he blow it any more frequently than you did?
A. No, sir; about the same time, I guess.
X Q. 141. Was this fog-horn fastened to the deck or the rail?
A. Yes, sir; it was fastened right on the windlass, right on the forecastle deck.
X Q. 142. How was it fastened,—was it screwed in or bent on?
A. No, sir; it was lashed, I think; I couldn't say exactly how it was lashed, because they put it on during the other watch.
71 X Q. 143. It is not permanently fixed?
A. It always has to be fastened somehow, tied.

Direct examination resumed by Mr. CARVER:

Q. 144. How was the wind at four o'clock,—was it more moderate than it was at twelve o'clock?
A. Well, sir, I don't know as it was much moderater; near about the same.

(MEMORANDUM.—Exhibit C, R. H. J., annexed to this deposition, is omitted in printing this record.—John G. Stetson, clerk.)

Deposition of John August Williams.

BOSTON, *Aug.* 1, 1894.

Direct examination by Mr. CARVER:

Q. 1. What is your full name?
A. John August Williams.
Q. 2. And you are a native of Finland?
A. Yes, sir.

Q. 3. And where do you live?
A. Liverpool, England.
Q. 4. How old are you?
A. Twenty-eight, sir.
Q. 5. How long have you been to sea?
A. Thirteen years.
Q. 6. And were you on board the Golden Rule when the collision took place?
A. Yes, sir.
Q. 7. And where did you ship on board of her?
A. Halifax; joined her in Liverpool, N. S.
Q. 8. And she was bound from Ponce to Boston when the collision took place?
A. Yes, sir.
Q. 9. And loaded with a cargo of molasses and sugar?
A. Yes, sir.
Q. 10. In whose watch were you?
A. In the starboard watch, sir.
Q. 11. What time did you come on deck that night?
A. Twelve o'clock, sir.
Q. 12. What did you do when you came on deck?
A. Relieved the wheel, sir.
Q. 13. How long did you remain at the wheel?
A. Till two o'clock, sir.
72 Q. 14. And where did you go at two o'clock?
A. Went on the lookout, sir.
Q. 15. How was the weather at two o'clock?
A. It was clear weather at two o'clock, sir.
Q. 16. Did it afterwards grow foggy?
A. Yes, sir; it got foggy about quarter to three, sir.
Q. 17. And what did you do then?
A. Commenced to blow the fog-horn, sir.
Q. 18. On what tack was your vessel?
A. Port tack, running free.
Q. 19. How many blasts did you blow of your fog-horn?
A. Three blasts.
Q. 20. How often did you blow it?
A. Every one or two minutes.
Q. 21. How long did you stay on the lookout?
A. Until four o'clock, sir.
Q. 22. Who relieved you on the lookout?
A. William Wilson, sir.
Q. 23. What did you do then?
A. I went into the forecastle.
Q. 24. Did you see the lights of your vessel while you were on the lookout?
A. Yes, sir.
Q. 25. How were they burning?
A. They were burning all right, sir, bright.
Q. 26. Did you hear any fog whistle of a steamer before you went below?

A. Steam whistle; yes, sir.
Q. 27. And where did it bear from your vessel?
A. It was on the port bow when I first heard it, sir.
Q. 28. On the port bow?
A. Yes, sir.
Q. 29. To windward or leeward?
A. To windward, sir.
Q. 30. Do you know what course your vessel was steering?
A. The time I was at the wheel we were steering north by east half east.
Q. 31. North by east half east?
A. Yes, sir.
Q. 32. Do you know what course she was steering at four o'clock?
A. No, sir.
Q. 33. Did you make any report of this steamer?
A. Yes, sir.
73 Q. 34. What did you say?
A. I reported a steamer's whistle on the port bow, sir.
Q. 35. And did you continue to hear the steam whistle?
A. Yes, sir.
Q. 36. And how did it bear after you first heard it?
A. It bore on the starboard bow.
Q. 37. It bore on the starboard bow. How did it bear when you went below?
A. It bore about four points on the starboard bow, sir.
Q. 38. How many blasts did you blow with your fog-horn?
A. Three blasts.
Q. 39. Did you see the steamer before four o'clock?
A. No, sir. I didn't see anything at all, except I heard the steam whistle.
Q. 40. And who relieved you?
A. William Wilson.
Q. 41. And what did you do then?
A. I went into the forecastle.
Q. 42. And did you hear William Wilson sound the fog-horn?
A. Yes, sir.
Q. 43. How long did you remain in the forecastle?
A. I was in the forecastle about ten minutes, until the collision took place.
Q. 44. And where were you when the collision took place?
A. Just abaft the forward house.
Q. 45. Did you see where the steamer struck you?
A. Between the windlass and the forward house.
Q. 46. And how far did she cut into you?
A. That I couldn't tell, exactly how far.
Q. 47. Did she cut the bow off?
A. Yes, sir.
Q. 48. Did you hear any report from the man on the lookout?
A. What?
Q. 49. Did you hear him make any report of the steamer after you went below?

A. No, sir; that I didn't hear.
Q. 50. You didn't hear any?
A. No, sir.
Q. 51. Did the mate come forward before you were relieved?
A. Yes, sir.
Q. 52. How long before?
A. About five minutes before I was relieved, sir.
74 Q. 53. And where was the mate when you left the forecastle head?
A. He was on the forecastle head too.
Q. 54. When you left?
A. Yes, sir.
Q. 55. And afterwards you were taken aboard of the steamer, after the collision?
A. I was taken aboard of the steamer.
Q. 56. How did you come aboard,—by a line?
A. Yes, sir.
Q. 57. Did you lose all your personal effects?
A. Yes, sir.
Q. 58. Have you got a list of them?
A. Yes, sir.
Q. 59. Will you give us the list?
A. Yes, sir.

(A list is produced and marked "Exhibit D, R. H. J.," and annexed to this deposition.)

Q. 60. Are these fair prices for the goods you lost?
A. Yes, sir.

Mr. CARVER: The amount is $17.

Q. 61. Where are you employed now?
A. On board of the Chattahoochee. I haven't signed the articles yet.
Q. 62. What are you doing there?
A. Washing paint-work.

Cross-examination by Mr. RUSSELL:

X Q. 63. You went on the lookout at two o'clock, as I understand you?
A. Yes, sir
X Q. 64. Now, how many were on deck from two o'clock until four?
A. The man at the wheel and me, sir.
X Q. 65. Was the captain on deck?
A. No, sir; not at two o'clock.
X Q. 66. Did he come on deck before four?
A. Yes, sir.
X Q. 67. Now, when did the captain come on deck?
A. I couldn't say exactly when he came on deck, but he came on deck, sir, after one bell, sir.

X Q. 68. That is, after ten minutes to four?
A. Yes, sir.
X Q. 69. And did the mate come on deck?
A. Yes, sir; the mate came on deck a few minutes before.
X Q. 70. A few minutes before the captain?
A. Yes, sir.
X Q. 71. So that from quarter of three until about quarter of four you and the man at the wheel were the only two on deck?
A. Yes, sir.
X Q. 72. How soon after the mate came on deck did the captain come?
A. Yes, sir.
75 X Q. 73. How soon after, my question is.
A. He came just after him, sir.
X Q. 74. Was this after the one bell?
A. Yes, sir.
X Q. 75. Neither of them was on deck until after the one bell?
A. No, sir.
X Q. 76. And that sounded at ten minutes to four?
A. Yes, sir.
X Q. 77. Who was the man at the wheel?
A. A Swede; I think his name is Broden.
X Q. 78. Now, when it became foggy, there was no one on deck but you and the man at the wheel?
A. No, sir.
X Q. 79. Which of you was in command of the vessel—you or the man at the wheel?
A. There was neither of us in command, as far as I know.
X Q. 80. You didn't give him any orders, did you?
A. No, sir.
X Q. 81. Did he give you any?
A. No, sir.
X Q. 82. What suggested to you getting the horn at quarter to three?
A. I started to blow the horn on my own account as soon as it came foggy.
X Q. 83. Where did you get the horn?
A. It was lashed forward, sir.
X Q. 84. How long had it been there?
A. That I couldn't exactly say, sir, when it was—I know it was lashed that day or——
X Q. 85. Had it been there all through your watch?
A. Yes, sir.
X Q. 86. Had you ever used it before?
A. No, sir.
X Q. 87. Had you ever used any mechanically blown fog-horn before?
A. On board that vessel?
X Q. 88. No; on any vessel.
A. Yes, sir.
X Q. 89. Was this fog-horn like the others you had seen?

A. No, sir; I hadn't seen this kind of a fog-horn before, sir.

X Q. 90. How did this differ from the others?

A. This pulled right up, sir, and then you shoved it down—pressed it down.

X Q. 91. And you get the noise by pushing down?

A. Yes, sir.

X Q. 92. Did you have to lean over to push down?

A. Yes, sir; lean right on it.

76 X Q. 93. How far do you have to bend over by the time you get it away down?

A. Have to bend about as far as my knees, sir.

X Q. 94. Now, you were blowing that horn for something over an hour, if I understand you?

A. Yes, sir.

X Q. 95. Did you blow it all the time during that hour?

A. Yes, sir; till one bell was struck, and I had to go and relieve the man at the wheel to call the watch.

X Q. 96. And when one bell was struck no one was blowing the horn?

A. No, sir.

X Q. 97. And when you went aft, until he came forward, there was no one forward on the vessel?

A. No, sir.

X Q. 98. And that was somewhere between ten minutes to four and four o'clock?

A. Yes, sir.

X Q. 99. For how many minutes was there no one on the forward part of the vessel?

A. About two or three minutes.

X Q. 100. Did you give any orders to the man that relieved you?

A. I gave him orders to report steam whistles.

X Q. 101. You didn't report it yourself?

A. No, sir. He went down below and called the captain and called the mate. I told him to report it.

X Q. 102. That was at one bell?

A. Yes, sir; I always used to take the wheel at one bell, while he went and called the mate.

X Q. 103. Who was the man you are speaking of, who called the master and mate?

A. Broden.

X Q. 104. The man who was at the wheel or——

A. The man at the wheel.

X Q. 105. Then you went and took the wheel, and he went down below, calling the master and mate?

A. Yes, sir.

X Q. 106. And that was after you heard the steamer?

A. Yes, sir.

X Q. 107. How long after you took the wheel was it?

A. After I heard the steamer—it was about four or five minutes after.

X Q. 108. It was four or five minutes after you heard the steamer before the captain came on deck?

A. Yes, sir; and then it was just as much as I could make it out then—that it was a whistle.

77 X Q. 109. But you were sufficiently certain that it was a steamer to send down for the captain and the mate?

A. Yes, sir.

X Q. 110. That was your whole object in sending the man at the wheel down below, wasn't it?

A. Yes, sir.

X Q. 111. Because you thought you were approaching some other vessel?

A. Yes, sir.

X Q. 112. How was the wind that night?

A. It was on the port quarter, sir.

X Q. 113. How much of a breeze did you have?

A. We were going between seven and a half and eight knots.

X Q. 114. You were going—the schooner was going between seven and eight knots?

A. Yes, sir.

X Q. 115. How long had she been keeping up that speed; the same all through your watch?

A. Oh, yes, sir; she was keeping it up through our watch.

X Q. 116. Did you notice at any time during your watch the log—did you look at the log?

A. No, sir.

X Q. 117. Your idea of the speed, then, is merely an estimate?

A. Yes, sir.

Direct examination resumed by Mr. CARVER:

Q. 118. Did you see the captain while you were at the wheel?

A. No, sir.

Q. 119. And did you see the captain on deck at all?

A. Yes, sir. I saw him after one bell, when I got forward again.

Q. 120. Who struck the one bell?

A. The man at the wheel, sir.

Q 121. And who called the captain and the mate?

A. The man who was at the wheel. The same man who struck one bell; he called the captain and the mate.

Q. 122. How did he call them—down the after companionway?

A. No, sir; he went down to the captain and called him.

Q. 123. Did you see him go down?

A. Yes, sir.

Q. 124. What did you do?

A. I was at the wheel during that time, sir.

Q. 125. When you came forward did you find anybody there?

A. No, sir.

78 Q. 126. Where was the mate?

A. The mate was not up then, sir, when I came up.

Q. 127. What did you do when you went forward, first thing, again?

A. I started to blow the fog-horn first thing.

Q. 128. Did you hear the whistle of the steamer between the time you left the forecastle head and the time you went back there?

A. Yes, sir; I heard it twice during that time.

Q. 129. And you thought it was about two minutes from the time that you——

A. Two or three minutes. I couldn't say for certain.

Q. 130. Two or three minutes between the time you blew your fog-horn——

A. Yes, sir; from the time I left the forecastle head until I got back again, sir.

Q. 131. Did you blow the fog-horn just before you left the forecastle head?

A. Yes, sir.

Q 132. And blow it as soon as you got back?

A. As soon as I got back on the forecastle head I blowed it again.

Q. 133. How long do you think that was before the collision?

A. That I couldn't say exactly; I should suppose it would be fifteen or twenty minutes; something like that.

Q. 134. Was the captain on deck at the time of the collision?

A. Yes, sir.

(MEMORANDUM.—Exhibit D, R. H. J., annexed to this deposition, is omitted in printing this record.—John G. Stetson, clerk.)

Agreement as to Testimony of Broden and Coleman.

It is hereby agreed that no comment shall be made or taken by the court, by reason of the fact that O. F. Broden and William Coleman were not called as witnesses in this case; that both of them were on the schooner Golden Rule at the time of the collision with the steamship Chattahoochee; that they were taken by said steamship to Savannah, Ga.; that they at once shipped on steamships at said port, and that although effort has been made to find them on the part of the libellants, it has not been possible to obtain them or their depositions.

79 In order to allow the early trial of the case, it is hereby agreed that if produced as witnesses they would respectively testify as follows:

O. F. BRODEN, a native of Sweden, if called, would testify as follows:

I was an able seaman on board of the schooner Golden Rule, on the voyage on which she was sunk by the steamship Chattahoochee. I came on deck at twelve midnight, being in the starboard watch, just before the collision. At that time I went on the lookout, the weather being clear at the time. I remained on the lookout until 2 a. m., when I was relieved, and then I took the wheel. I remained

at the wheel until 4 a. m. or a few minutes before, when the starboard watch was relieved, and I was relieved by William Coleman, when I at once went below and did not come on deck until just as the collision took place. During all of the time from 3. a. m. to the time I left the wheel the schooner Golden Rule was on the port tack, heading north by east one-half east, and that course was not changed by me, nor was her course changed at all during that time. It became foggy about 3 a. m., and after that until the collision a proper fog signal was sounded.

WILLIAM COLEMAN, a native of England, if called, would testify as follows:

I was an able seaman on board of the schooner Golden Rule, on the voyage in which she was sunk by the steamship Chattahoochee; was in the port watch on the morning of the collision. I was called at 3.50 a. m., and at once came on deck. The mate gave the order to relieve the wheel when eight bells were struck, 4 a. m. I at once went to the wheel. The course given to me was north by east one-half east, by Broden, who was then at the wheel and whom I relieved. I remained at the wheel until after the steamship Chattahoochee struck our vessel, which was about 4.10 a. m. During all of this time I steered the course of north by east one-half east, and did not change it. The course of the schooner Golden Rule was not changed after I came on deck to the time of the collision, but was held all the time; that during all of this time the proper fog signal was sounded.

80 It is hereby agreed that no inference shall be taken by the court of the fact that nothing is stated on the question of who were on deck at the time, and who was in charge of the deck, as the above is all that the claimants are willing to admit would be testified to by said witnesses.

RUSSELL & RUSSELL,
Proctors for Claimant.
CARVER & BLODGETT,
Proctors for Libellants.

Proofs for Claimant, Now Appellee.

BOSTON, *Feb.* 6, 1895.

Examination of GEORGE A. SAVAGE.

Direct examination by Mr. RUSSELL:

Q. 1. What is your full name?
A. George Augustus Savage.
Q. 2. Where do you reside, Captain?
A. On board the Chattahoochee.
Q. 3. Have you a home?
A. No; only the Chattahoochee; that is, my folks——
Q. 4. What is your occupation?
A. Seaman.

Q. 5. How long have you followed the sea?
A. About seventeen years.
Q. 6. In what capacities?
A. Most every capacity,—that is, from sailor up.
Q. 7. How long have you been a master of a steamship?
A. Six years.
Q. 8. Of what steamship are you now master?
A. The Chattahoochee.
Q. 9. How long have you been master of her?
A. About sixteen months.
Q. 10. Were you ever master of a steamer before that?
A. Yes, sir.
Q. 11. What steamer?
A. The City of Savannah.
Q. 12. What other?
A. And the Dessoug.
81 Q. 13. These vessels sailed between Boston and Savannah?
A. One sails between Philadelphia and Savannah. I have sailed between the three ports during the six years, pretty nearly equally divided in time.
Q. 14. The Chattahoochee belongs to the New York run?
A. Yes, sir.
Q. 15. And runs generally between New York and Savannah?
A. Yes, sir.
Q. 16. And this trip she was on the Boston & Savannah line?
A. Yes, sir.
Q. 17. And you left Boston when?
A. The 19th of July, about 3.30. p. m.
Q. 18. The Chattahoochee is what kind of a steamship; an iron steamship, isn't she?
A. Iron steamship, compound engines, 1,887 net.
Q. 19. What is her length over all?
A. Well, her length is about three hundred feet. She is two hundred and eighty-five feet between perpendiculars; two masts, fore-and-aft rig.
Q. 20. She is about the size of the New York steamers, isn't she—the Whitney and the Dimock?
A. She is a little larger, I think.
Q. 21. Now, did you have a cargo when you went out on this voyage?
A. Yes, sir.
Q. 22. What was your draught of water?
A. Sixteen and six-tenths aft, and fourteen forward, I think. It was about that.
Q. 23. And after leaving Boston how did you proceed?
A. I proceeded on my regular course to Cape Cod. We were in the habit of going through the sound, but it began to get hazy that night, and I decided to go outside, to avoid vessels.
Q. 24. Where did you change your course to go outside?
A. Off Cape Cod, the Highlands.
Q. 25. What was the weather at that time?

A. The weather was hazy, but not thick; damp, though.

Q. 26. Did you remain on deck during the night?

A. Most of the night.

Q. 27. When did you put the steamer on her southeast course?

82 A. Oh, it was about 7.45; it was not a southeast course; southeast half east; southeasterly from Cape Cod down.

Q. 28. When did you put her on the course she was on just before the time of the collision?

A. I don't know, sir, whether it was one or two o'clock. Her time book will show. I changed my course several times during the night.

Q. 29. What was the weather during the night?

A. Well, the weather was hazy up to 12.30, and then it was foggy.

Q. 30. A fog came in at 12.30 where you were?

A. Yes; thick enough to blow the whistle.

Q. 31. And the steamer was where?

A. About off Sankety.

Q. 32. That is, Nantucket?

A. Yes, sir.

Q. 33. After that was the whistle blown?

A. Blown regularly; yes, sir.

Q. 34. How frequently?

A. Well, it didn't exceed a minute and a half, I suppose. I didn't keep any time of that.

Q. 35. That was a regular fog blast?

A. Yes, sir; a regular fog blast.

Q. 36. Before four o'clock were you in the pilot-house?

A. Yes, sir.

Q. 37. How long before the collision had you been in the pilot-house?

A. Since 12.30.

Q. 38. At 12.30 you came on deck and went into the pilot-house?

A. Yes, sir.

Q. 39. Who was with you?

A. The first officer was with me the whole three and a half hours I was on deck; and the second officer came on deck just before the collision.

Q. 40. Did you have a quartermaster there?

A. Yes, sir.

Q. 41. Did you have a lookout?

A. Yes, sir.

Q. 42. Where was he stationed?

A. Stationed on the bow.

Q. 43. Those men made the watch, did they, at that time, from twelve to four?

A. Yes, sir. We had three other men in the watch.

Q. 44. Where were they?

A. They were on the main deck.

Q. 45. Now, before four o'clock what was the first you heard of this schooner, or any schooner or vessel?

83 A. Well, we—about ten minutes to four; I imagine somewhere near there, between that and four o'clock, we heard the blast of a horn on the port bow.

Q. 46. What did you hear?

A. I heard one blast of a horn.

Q. 47. One single blast?

A. One single blast.

Q. 48. Was that reported?

A. Yes, sir.

Q. 49. By the lookout?

A. Reported by the lookout.

Q. 50. What did he report?

A. A blast of a horn on the port bow, or a horn on the port bow.

Q. 51. At that time how fast were you going?

A. I should imagine we were going between ten and eleven miles an hour.

Q. 52. After hearing that blast of the horn did you give any orders?

A. Before the sound of the horn died away I said, "Hard-a-port," and stopped the engine.

Q. 53. Any order to reverse the engine?

A. Reverse the engine. We can't stop still.

Q. 54. What was the order you gave to the engineer?

A. Stop and reverse.

Q. 55. And that was given at what hour, do you remember, at what time?

A. It might have been five minutes before four, or six.

Q. 56. And at the same time you had the wheel put hard-a-port?

A. Yes, sir.

Q. 57. And that was done by the quartermaster?

A. Yes, sir.

Q. 58. And did the Chattahoochee stear by steam?

A. By steam.

Q. 59. Did you see the wheel put hard over?

A. Yes, sir.

Q. 60. Were the windows in your pilot-house open that night?

A. Yes, sir.

Q. 61. Now, what did you next see or hear of the schooner?

A. Well, I reversed the engine for a few minutes in order to locate the sound of the horn, and the next thing the second mate reported the vessel coming.

Q. 62. Now, was your headway reduced during that time?

A. Oh, it must have been.

Q. 63. How much?

A. Oh, it was reduced four or five miles an hour.

Q. 64. And then you say you heard what from the schooner, or saw what?

84 (By Mr. CARVER:)

Q. 65. You say it was reduced to four or five miles?

A. Yes, sir; we had been backing. I couldn't tell how much we had reduced it.

(By Mr. RUSSELL:)

Q. 66. You had been backing how long on the engine?

A. I don't suppose it was more than a minute.

Q. 67. And what did you hear or see?

A. I saw the vessel then coming for us.

Q. 68. What did you see of the vessel?

A. I saw her sails. It was a hard matter to see her. She was white, you know, and her hull was white.

Q. 69. Was the vessel reported after she came in sight?

A. Yes, sir; the second officer reported the vessel, and the man on the lookout reported the vessel.

Q. 70. And you saw her at the same time, or afterwards?

A. I saw her at about the same time. We were all on the lookout for her.

Q. 71. How many times had you heard her fog-horn before you saw her?

A. Well, I heard it twice, as I thought.

Q. 72. From the same direction?

A. No; the last time it was not from the same direction, it was more on the beam.

Q. 73. And the first time it was where?

A. The first time it was almost ahead.

Q. 74. And the second time it was on the beam?

A. Yes, sir.

Q. 75. And the next?

A. The next I saw his sails coming for us, and I said, "He is going to sink us," and I rang ahead full speed.

Q. 76. Why did you do that?

A. We were swinging then pretty fast; we were hard-a-port all the time, and I did it to make her swing faster.

Q. 77. Suppose you had starboarded instead of porting?

A. Oh, I couldn't at that time.

Q. 78. Why couldn't you?

A. She would have sunk us.

Q. 79. Why did you go ahead full speed?

A. I wanted to swing fast enough to swing on the same angle with him, if possible.

Q. 80. Now, how soon after that did the vessels come together?

A. Oh, it was very soon.

85 Q. 81. How far off was she when you made her out?

A. I don't know, sir. I don't suppose she was more than a ship's length. It's a hard matter to judge of those things unless you see a black object.

Q. 82. Did you see her sails?

A. Yes, sir.

Q. 83. Did you see about how fast she was going?

A. No, sir; I know she crawled ahead of us to some extent. I know she was going as fast as we were or faster, by the way we collided.

Q. 84. How fast did you swing?

A. After we collided we were heading north northwest.
Q. 85. How do you know that?
A. The quartermaster told me on the bow.
Q. 86. How were you heading before that?
A. Southwest.
Q. 87. You had swung those points, then, under your port helm?
A. Yes, sir.

(By Mr. CARVER:)

Q. 88. You said after you collided you were heading north northwest?
A. I said when we struck.

(By Mr. RUSSELL:)

Q. 89. You had swung around how many points?
A. From southwest—six or seven points.
Q. 90. Supposing the schooner had starboarded her wheel when you made out her sails, would there have been a collision?
A. That was the only way to avoid it.
Q. 91. She was sailing free?
A. Yes, sir; she was sailing free.
Q. 92. Could you tell whether she was making much fuss in the water?
A. No, sir.
Q. 93. You didn't notice under her bow?
A. I didn't notice her bow at all. I didn't notice how fast she was going. I was trying to get out of it.
Q. 94. Now, how did the vessels come together, Captain?
A. That way (illustrating with models).
Q. 95. The port bow of the steamer struck the starboard bow of the schooner?
A. Yes, sir.
Q. 96. At an angle glancing forward?
A. Yes, sir.
Q. 97. And how far aft on the schooner did you strike her?
A. Well, forward of the foremast; I don't know the length of the bow from the foremast?
86 Q. 98. Did you cut into the schooner?
A. Yes, sir; I don't know how much, but I know we cut in enough to sink her.
Q. 99. What happened after that?
A. She swung right alongside. We didn't have much headway at that time.
Q. 100. Was she low in the water?
A. Yes, sir; she was quite low. She swung alongside, and we took the men aboard. We had a boat swung over the side, but we had no occasion to use it.
Q. 101. Now, Captain, during all this time was your whistle sounded regularly every minute?
A. Yes, sir.

(The diagram made by the witness is marked "Exhibit 1, R. H. J., Savage.")

Q. 102. Who blew the whistle?
A. The quartermaster. First one and then the other. We would relieve each other at that.
Q. 103. How was the schooner heading when you struck her?
A. How was the schooner heading?
Q. 104. Yes; northeast, or north by east?
A. I suppose she was heading north by east. I took the captain's statement.
Q. 105. Did you see any change in her course?
A. No, sir; I couldn't see any.
Q. 106. Nor in her sails?
A. No, sir.

Cross-examination by Mr. CARVER:

X Q. 107. Whose watch was it at the time of the collision?
A. The first officer's.
X Q. 108. And who was on the lookout at the time of the collision?
A. On the bow?
X Q. 109. Yes.
A. Fred. Wall.
X Q. 110. Had you struck eight bells at that time?
A. No, sir.
X Q. 111. Had you relieved the watch?
A. No, sir.
X Q. 112. Was the watch being relieved?
A. The watch was on deck.
X Q. 113. And both the first officer and the second officer were in the pilot-house besides yourself?
A. Yes, sir.
X Q. 114. How far from the bow of the vessel is your pilot-house?
A. From the bow? Fifty feet, I guess.
87 X Q. 115. And how long is your ship?
A. 280—300 on deck—280 is her keel, or 284.
X Q. 116. How wide is she?
A. Forty feet.
X Q. 117. Did you have any sails set that morning?
A. No, sir.
X Q. 118. And at the time of the collision it was daylight?
A. Just about daylight.
X Q. 119. Did you see any lights on the schooner?
A. I saw his green light after the collision.
X Q. 120. After the collision?
A. Yes, sir.
X Q. 121. How far from the pilot-house is the whistle?
A. Well, about thirty feet, I imagine; I couldn't tell.
X Q. 122. Aft of the pilot-house?

A. Aft of the pilot-house, and forward of the smokestack.

X Q. 123. And how high above the main deck is the pilot-house?

A. The main deck—the pilot-house is on the hurricane deck.

X Q. 124. About how high above the main deck, where the look-out stands—I mean the hurricane deck, the upper deck, I should say?

A. We are situated so as to see over the bow.

X Q. 125. Your vessel is built like the Baltimore steamers?

A. Just about the same, like a good many of the Baltimore steamers. Some of them have got the pilot-house on top.

X Q. 126. Now, what was the first you heard of any sound whatsoever, either reported, or the sound itself,—what attracted your attention to any fog-horn?

A. Of this last vessel?

X Q. 127. Yes, I mean in regard to this vessel.

A. Well, we passed a vessel, you know, at two o'clock in the morning. You don't have reference to that?

X Q. 128. Oh, no, sir.

A. Well, between about ten minutes to four and four o'clock.

X Q. 129. And how long do you think that was before the collision.?

A. Not more than two minutes.

X Q. 130. And you say that what attracted your attention to it was——

A. It might have been my hearing his horn.

X Q. 131. Was the report from your lookout?

A. Report from the lookout, and we all heard it.

88 X Q. 132. Now, what did the lookout say?

A. Horn on the port bow.

X Q. 133. And how did it appear to bear on the port bow?

A. Well, at first it didn't seem to be much on the port bow.

X Q. 134. It seemed to grow more on the port bow?

A. It drew more on the port bow.

X Q. 135. How fast was your vessel going at the time that you heard that sound?

A. Well, I imagine that she was going somewhere between ten and eleven miles an hour.

X Q. 136. What course was she steering?

A. Southwest half west.

X Q. 137. And what order did you give?

A. Hard-a-port; and signalled to reverse the engines.

X Q. 138. Did you do both those things at the same time?

A. Both at the same time.

X Q. 139. And after you did that, did you hear the signal again?

A. I heard the signal again, as I thought.

X Q. 140. As you thought?

A. Yes.

X Q. 141. How did it bear from you then?

A. It was more on the beam.

X Q. 142. More on your beam?

A. Yes, sir.

X Q. 143. That is the way it appeared?
A. That is the way it appeared.
X Q. 144. And when you saw the vessel you saw her right ahead?
A. No; on the port bow.
X Q. 145. A little on the port bow?
A. A little on the port bow.
X Q. 146. But during all this time you had been swinging to starboard?
A. Had been swinging to starboard.
X Q. 147. When you gave the order hard-a-port, you say you gave the order to reverse the engines?
A. Yes, sir.
X Q. 148. Did you give the order full speed astern?
A. No, sir.
X Q. 149. What order did you give?
A. Just to back.
X Q. 150. Just to stop?
A. Yes; stop her, with two bells, and turn two bells to back her. If I had given full speed I would have rung the jingle, but I didn't ring the jingle.
89 X Q. 151. How long do you think it was from the time that you gave the order to stop your ship up to the time that you saw the vessel herself?
A. About a minute.
X Q. 152. And the next order you gave was full speed ahead?
A. Full speed ahead.
X Q. 153. How long do you think it was from the time you gave the order full speed ahead, until the time of the collision?
A. Well, about a minute, I suppose. I don't suppose it was more than two minutes from the time I first heard her——
X Q. 154. Do you know how long it will take you to stop your ship?
A. I can stop the ship from going full speed ahead in four minutes—that is, to get sternway on her; but I can swing round in less time than four minutes.
The COURT: I don't understand what the captain says about that—that is, it is four minutes to change from full speed ahead to full speed astern, or to stop the ship?
A. Yes, sir; about four minutes.
The COURT: From full speed ahead to stopping your ship about four minutes?
A. Yes, sir.

(By Mr. CARVER:)

X Q. 155. What is full speed ahead on your vessel?
A. Thirteen miles. It depends on the weather.
X Q. 156. What have you got—compound engines?
A. I have got compound engines; yes.
X Q. 157. How were you heading when you got the order, full speed ahead?
A. I don't know.

X Q. 158. Did you see the compass heading of your vessel when she struck?

A. No, sir.

X Q. 159. Then what is this course you gave as to the way she was heading when she struck? How did you get that?

A. From the man at the wheel.

X Q. 160. Was that when she struck or after she struck?

A. About the time that she struck.

X Q. 161. When you first saw the sails of the vessels, how did she bear on your port bow?

A. About a point and a half.

X Q. 162. About a point and a half?

A. Yes, sir.

X Q. 163. How much had she swung off to starboard at that time, about how much?

A. I couldn't say.

90 X Q. 164. Do you think she had swung off a point and a half?

A. I couldn't say. She had swung off some, though. We were hard-a-port all the time.

X Q. 165. How much did you swing off at all from the original course up to the time you struck her?

A. Well, from southwest half west to north-northwest.

X Q. 166. How fast do you think your steamer was going when you struck the vessel?

A. I don't suppose we were going more than six miles; we hadn't gathered full headway after ringing full speed astern.

X Q. 167. You were swinging all the time?

A. Yes, sir.

X Q. 168. You were bringing your ship more and more to the head of the schooner?

A. Yes, sir; had I seen the schooner before reversing my wheel it would have been different altogether. It was impossible to reverse——

X Q. 169. If you had seen the schooner before you had reversed your engines——

A. Before I had put my wheel over.

X Q. 170. You would have been able to keep clear of her all right—is that true?

A. No, sir.

X Q. 171. Is that true?

A. No, sir; we couldn't see her very far.

X Q. 172. I asked you if you had seen this vessel before you reversed your engines——

A. If I had seen her as far as she saw me, I could have cleared her by shifting my wheel; or if I had heard him blow three blasts I should have done just the same; I should have acted just the same as if I had heard one; but after that we heard one blast, one blast continued to blow around us. Whether we heard the captain's whistle or the blast of the horn, I don't know. I don't doubt that he was blowing his horn. We couldn't hear his three blasts.

X Q. 173. You don't know whether you heard his blast or somebody else's blast?

A. No, sir.

X Q. 174. There were several around there?

A. No; there was one other horn around there. The captain heard it; I called it to his attention.

X Q. 175. Did you hear his horn before——

A. I don't know whether it was his or the other, but I know
91 I had a man in the pilot-house tooting the whistle to keep this other fellow from running into us, as I feared. I tooted the whistle all the time I was in collision with this vessel to keep the other fellow clear of us.

X Q. 176. Did you hear the horn while you were blowing your whistle?

A. Yes, sir. Of course we didn't keep the whistle going all the time.

X Q. 177. How far were you located in the pilot-house from the engines?

A. I suppose about fifty feet. The engines were in about the middle of the ship, and the pilot-house is about half way between the bow and the engine-room.

X Q. 178. Do you think, Captain, there would have been any collision provided you had rung your engines full speed astern as soon as you heard the fog-horn?

A. Well, I was ringing astern when I saw him.

X Q. 179. I say, if you had rung full speed astern when you first heard the horn, do you think there would have been any collision?

A. I think he would have hit me right square in the side.

X Q. 180. You think this vessel would have hit you right square in the side?

A. Yes, sir; that is, full speed ahead, I rang that in order to avoid him—I saw him then.

X Q. 181. You were trying to go across his bow?

A. No, sir; I was not trying to go across his bow, but I was trying to go on the same angle with him, and half a minute more would have done it.

Mr. RUSSELL: You were swinging your head in the same direction as his head?

A. Yes, sir, in the same direction. After I had started that was the only way out of it, after I had ported my wheel.

The COURT: I don't think I understand how that vessel could have run you down.

X Q. 182. Just show with your models how, if you had reversed, you would have been run down by the schooner.

A. Yes, sir; here is where we were (illustrating).

The COURT: The further one is the steamer, is it?

The WITNESS: Yes, sir.

Mr. RUSSELL: Put it up here, if the court does not object.

Mr. CARVER: That is where he thinks he heard the sound.

The WITNESS: This is when I first saw her. Now, there is
92 where I made him. That would bring us on his starbo-rd, and bring him on *one* port.

Mr. RUSSELL: You swung over to starboard?

The WITNESS: If he had been blowing three whistles coming down here—you can head within ten points, you know, running free—you can't tell how a vessel is heading—if you go within ten points you cover the law; he was within the limits, on the northerly course. If I had heard his three whistles I should have been obliged to do the same thing.

The COURT: How could he have run you down?

The WITNESS: If I had backed that would have killed my headway to a certain extent, and thrown us that way, which we were going as fast as we could, and as it was I rung up in order to get ahead of him.

Mr. CARVER: Suppose you had put your helm the other way.

The WITNESS: If I had put my helm the other way when I first heard him I should have gone clear; that is evident. But I didn't know that. I shouldn't put my helm the way the whistle sounded. If I had seen him I could have cleared him. There is no doubt I should have cleared him if I had put my wheel the other way, but it is not natural to put it that way.

Mr. CARVER: Suppose you hadn't put it either way, do you think they would have gone clear of each other?

The WITNESS: I think the schooner would have gone into us. I don't know whether I heard his horn or the other.

The COURT: Suppose you had heard three blasts, what would you have done?

The WITNESS: Put my wheel to port.

The COURT: That is just what you did do.

The WITNESS: Yes, sir.

The COURT: But that didn't clear him.

The WITNESS: No, sir. But that is the only thing I could have done.

The COURT: If you had seen him when you heard the fog-horn what would you have done?

A. I would have starboarded, and if I had heard him on my starboard bow, I should have starboarded, and then I should have gone clear of him.

93 Mr. CARVER: If you had kept on your course without porting you would have gone clear?

The WITNESS: If I had known which way he was heading, I would have gone clear easily enough.

Mr. CARVER: Supposing you had kept on your course.

The WITNESS: Well, I don't know what would have happened then. I didn't go ahead at all until I tried to locate him.

The COURT: In what direction did you hear this other vessel?

The WITNESS: We heard the other horn about where that is now (pointing).

The COURT: On the port bow?

The WITNESS: Yes, sir.

The COURT: You heard that after the collision?

The WITNESS: No, sir; before. It continued after the collision. I don't know which it was, whether it was this one or the other.

Mr. RUSSELL: Where was it after the collision?

The WITNESS: Right off our port quarter; but then I had swung from here round.

Mr. CARVER: How long was it after the collision that you heard the other sound?

The WITNESS: I heard it three or four times. I don't suppose we were together more than ten minutes, and I heard it two or three times in that time—twice or three times in that time.

The COURT: Was that farther off?

The WITNESS: Well, it seemed to be very near at first. I stopped pretty quick and reversed. It sounded very near.

Mr. CARVER: But the one that you heard after the collision, did it seem to be a good way off?

The WITNESS: Yes; it seemed to get further off. He was very evidently on his starboard tack. It sounded further off each blast he blew.

The COURT: Then he was bound south, evidently?

The WITNESS: Yes, sir.

Mr. CARVER: If you had heard one blast, the difference between one blast and three blasts would not have made any difference to you in the way you handled your ship?

A. Not under the circumstances; no, sir. I should have put the wheel to port anyway.

(Recess.)

94 *Examination of James Howlett.*

Direct examination by Mr. RUSSELL:

Q. 1. What is your full name?

A. James Howlett.

Q. 2. Where do you reside, Mr. Howlett?

A. Revere, Mass.

Q. 3. What is your occupation?

A. Seaman.

Q. 4. How long have you followed the sea?

A. About twenty-eight years, sir; about twenty-seven or twenty-eight.

Q. 5. Have you been on the steamship Chattahoochee?

A. Yes, sir.

Q. 6. When did you join her?

A. About the 17th or 18th of June, sir.

Q. 6½. What year?

A. Last year.

Q. 7. Had you been on steamers before that?

A. Yes, sir.

Q. 8. What ones?

A. Well, I have been on different ones. I have been on the

Commerce, the Oriental, the Alhambra, Gate City, and City of Macon.

Q. 9. What were you on the Chattahoochee?

A. First officer, sir.

Q. 10. And you joined her when?

A. About the 17th or 18th of last June.

Q. 11. That was a month or so before this collision?

A. Yes, sir.

Q. 12. Were you aboard of her on the voyage from Boston to Savannah the 19th of last July?

A. Yes, sir; as first officer.

Q. 13. When did you go on deck?

A. At twelve o'clock.

Q. 14. And remained how long?

A. Until five the next morning, or ten minutes past five.

Q. 15. Whereabouts were you?

A. In the pilot-house, in the port window.

Q. 16. Was it your watch on deck?

A. Yes, sir.

Q. 17. From twelve to four?

A. Yes, sir.

Q. 18. Was it foggy during the night?

A. Yes. sir.

Q. 19. What time did it get foggy?

A. Half past twelve.

Q. 20. And it continued foggy until after the collision?

A. Yes, sir.

95 Q. 21. The vessel was off Cape Cod at 12.30?

A. No, sir; she was outside, out in the channel.

Q. 22. Out in the south channel?

A. Yes, sir.

Q. 23. Were you in the pilot-house when this schooner was first heard?

A. When we heard the first horn; yes, sir.

Q. 24. What were you doing?

A. I was standing at the port window, sir.

Q. 25. Was any one with you?

A. No, sir. The captain was in the starboard window.

Q. 26. Who else were in the pilot-house?

A. The quartermaster, sir, and the second mate came in at the time. It was about three or four minutes of four, or five minutes. We were relieving watches.

Q. 27. Was a lookout forward?

A. Yes, sir.

Q. 28. What course were you steering before four o'clock?

A. Southwest half west, sir.

Q. 29. And it was then foggy?

A. Thick fog.

Q. 30. Had you been blowing your whistle?

A. Yes, sir.

Q. 31. Since 12.30?

A. Yes, sir.

Q. 32. What did you first hear of this schooner, or any schooner?

A. Of any schooner, sir, or this present one?

Q. 33. Before four o'clock what did you first hear of any vessel?

A. Well, we heard a horn about half past two, or two, or along that; I couldn't tell exactly.

Q. 34. After that what did you next hear?

A. We heard one blast of a whistle, sir, about a point on the port bow.

Q. 35. When was that?

A. That was about five minutes to four, I should say, or four minutes; along there.

(By Mr. CARVER:)

Q. 36. Was that a whistle or a horn?

A. A horn, sir.

(By Mr. RUSSELL:)

Q. 37. In what direction?

A. About a point on the port bow, about southwest half south.

Q. 38. One single blast?

A. One solitary blast, sir, was all that I heard at that time.

Q. 39. Was it a long or short blast?

A. Well, medium, sir; not very long.

Q. 40. What was done in the pilot-house after you heard
96 that blast?

A. The captain said to put the wheel hard-a-port, and he had his hand on the bells, and he rang and stopped her and backed.

Q. 41. What was the signal to the engine?

A. Four bells, sir.

Q. 42. What does that mean?

A. Stop and back.

Q. 43. Full speed?

A. No, sir; jingle is full speed.

Q. 44. Was the wheel ported?

A. The wheel was hard over to port. I helped the quartermaster to heave it over, but I don't suppose there was any occasion for it.

Q. 45. What do you mean by no occasion?

A. The wheel would go over with one man just as well as it would with two.

Q. 46. It goes by steam?

A. It goes by steam; yes, sir.

Q. 47. What did you next hear or see of any vessel?

A. Well, the next thing I see was the schooner.

Q. 48. How soon after you heard the blast of the fog-horn?

A. Shortly after, sir.

Q. 49. Can you say how shortly?

A. Well, no, sir; I couldn't say exactly.

Q. 50. Did you see the schooner from the same direction as you heard the fog-horn?

A. It couldn't be; no, sir; because the schooner was—the horn was on the port bow.

Q. 51. Where did you see her?

A. I see her a little on our port bow, sir, after we turning round to the northward and westward.

Q. 52. Did you see her from the same direction as you had heard the fog-horn?

A. At that time?

Q. 53. Yes.

A. We were turned more to the northward and westward. We were swinging on our port wheel.

Q. 54. What did you see of her?

A. I see her hull and bow.

Q. 55. Did you see her sails?

A. Yes, sir; but I didn't take much notice of them. I looked at her hull mostly.

Q. 56. Did you hear her fog-horn again?

A. No, sir.

Q. 57. What was done after seeing the schooner?

A. She was rung ahead, sir, full speed, when we see her.

Q. 58. Was there anything else done in the pilot-house?

A. The wheel was put hard-a-port.

Q. 59. That is, it was kept hard-a-port?

A. Yes, sir.

Q. 60. Could you tell how fast the schooner was going?

97 A. I should judge, when I just got a momentary glance of her bow, she was going between seven and eight knots.

Q. 61. Was she making a fuss in the water?

A. Yes, sir; she was.

Q. 62. Could you see her bow?

A. Yes, sir.

Q. 63. Could you see whether she had all sail set?

A. I couldn't see whether all sails were set or not.

Q. 64. After that what happened?

A. After that, when we struck her, I went down out of the pilot-house, and all the gear was out on the pin rail over on the port side.

Q. 65. That was after you struck?

A. Yes, sir.

Q. 66. How soon did you strike her after you saw her?

A. Very shortly afterwards.

Q. 67. You struck her where?

A. Forward of the fore rigging, between that and the cathead.

Q. 68. On the schooner's starboard side?

A. Yes, sir.

Q. 69. At what angles did the vessels come together?

A. Well, I couldn't say, sir; about an angle of forty-five.

Q. 70. About an angle of forty-five degrees?

A. Yes, sir; I should say so. It cut right into her. I see where it cut right into her.

Q. 71. Was the blow glancing forward or aft?

A. I think it was aft, sir, if I recollect rightly.

Q. 72. Then what did you do?

A. Then I hove that gear overboard, and the captain said, "Get a boat out," and so I had a boat swung out, and we were about to lower her, when the men got aboard. The boat was put out over the side.

Q. 73. Did you notice any change in the course of the schooner?

A. No, sir, I didn't.

Q. 74. And you heard how many blasts of her fog-horn?

A. Only one, sir, at that time. When I was getting the boat out I heard a blast of the horn, or two, I think it was that I heard, aft the beam.

Q. 75. That was from some other vessel?

A. Yes, sir.

Q. 76. Did you blow your whistle after 12.30—the steamer's whistle?

A. Yes, sir; continually blowing it.

Q. 77. How frequently?

A. Well, about once a minute, sir, or a minute and a half; not exceeding a minute and a half.

98 Cross-examination by Mr. CARVER:

X Q. 78. Just put these two models, taking this for the steamer and that for the vessel, the way they struck.

A. It was about that way, sir, as far as I could judge.

X Q. 79. This is the steamer, and that is the schooner?

A. Yes, sir.

X Q. 80. Where were you standing when you struck?

A. In the pilot-house, at the port window.

X Q. 81. Is that about it?

A. Yes, sir; as far as I could judge.

X Q. 82. And where was the captain standing when they struck?

A. At the port window, too, sir. He come across.

X Q. 83. Then you had never left the port window at all?

A. Yes, sir; I left it to help the quartermaster to heave the wheel hard-a-port. I think it was this way she struck here. I didn't take much notice of it at the time.

X Q. 84. Well, which way was it? Was it tailing aft or forward?

A. I think it was tailing aft, sir. At that time I didn't take much notice, because I was at the wheel with the quartermaster. We cut right into her.

X Q. 85. Well, did you cut off more on her port side or more on her starboard side?

A. We struck her on her starboard side, sir.

X Q. 86. But did you cut off more on the port or more on the starboard side?

A. We must have cut off her starboard side more.

X Q. 87. You don't think that was the way she struck, then?

A. Well, I won't swear the way they struck, because I was at the wheel. I heard the rush of water, and I jumped to the wheel.

X Q. 88. So that you couldn't tell which way she struck?

A. Well, not on my oath, sir. I know she struck her on the starboard bow, forward of the fore rigging.

X Q. 89. When you first heard this horn how did you think that the sound bore from your vessel?

A. About a point on the port bow, sir.

X Q. 90. And you heard only one blast?

A. That is all, sir.

X Q. 91. And thereupon, upon hearing that blast, the captain at once gave the order to hard-a-port?

A. The captain ran right over to the port window, sir, and he said, "Hard-a-port."

X Q. 92. And rang to stop and back?

A. Stop and back; yes, sir.

X Q. 93. Who was on the lookout at the time?

A. Fred. Wall was there, right alongside of us.

X Q. 94. Was anybody near him?

A. No, sir; he was on the lookout.

X Q. 95. Did he make any report?

A. Yes, sir.

X Q. 96. What did he say?

A. He said a horn on the port bow.

X Q. 97. A horn on the port bow?

A. Yes, sir.

X Q. 98. How long do you think it was after you heard the horn before you saw the vessel?

A. Not very long, sir; not very long; I couldn't judge the minutes exactly at that time.

X Q. 99. And do you know what time it was that the collision took place?

A. Well, I can say it was between eight minutes to four and four o'clock. Eight bells hadn't gone.

X Q. 100. Then all your statements as to time would be mere estimates, wouldn't they?

A. Well, between that time, sir,—between about eight minutes to four and four o'clock.

X Q. 101. How was the vessel heading when she struck?

A. Our vessel, sir?

X Q. 102. Yes.

A. Well, she was swinging to the northward and westward, sir.

X Q. 103. You couldn't tell just how she was heading?

A. Not on the point, sir; but I thought she was heading north northwest.

X Q. 104. How was the wind?

A. Southwest.

X Q. 105. And the wind you had was about ahead?

A. Yes, sir; we would bring it ahead, anyway, because we were steaming into it.

X Q. 106. What sort of a breeze was it?

A. It was about an eight-knot breeze.

X Q. 107. And you could feel it on your face as you came into the pilot-house?

A. Why, yes, sir.

X Q. 108. And how fast was your steamer going before you got any order in regard to stopping the engine?

100 A. I guess she was going about ten or eleven knots, sir.

X Q. 109. Suppose, Mr. Mate, that instead of putting your helm hard-a-port at the time it was done, the order had been given hard-a-starboard, would she have gone clear?

A. I was not going to give an order hard-a-starboard when there was a vessel on our port bow, and run the chances of going right straight into her. I should try to keep from her.

X Q. 110. Now, if the order hard-a-starboard had been given——

A. I couldn't tell about that. It was a thick fog. I didn't know how nigh the vessel was to us.

X Q. 111. Suppose that at the time that the fog signal was heard you had gone full speed astern, do you think there would have been any collision then?

A. Oh, no, sir; it wouldn't have been prudent to do so, with a horn on your port bow; you should go right ahead and try to turn from it.

X Q. 112. Do you think there would have been any collision in this case if you had gone full speed astern when you heard the horn?

A. I don't know. That vessel might have come right down and struck us amidships and sunk us.

Direct examination resumed by Mr. RUSSELL:

Q. 113. Did you keep the log book?

A. Yes, sir.

Q. 114. Is that it?

A. Yes, sir.

Q. 115. Were these entries made by you?

A. They were copied off the time book, sir, two days afterwards.

Q. 116. When you arrived in Savannah?

A. Yes, sir.

Q. 117. From what were the entries taken?

A. From the entries in the time book.

Q. 118. Who made the entries in the time book?

A. I made them in my watch, and the second mate made them in his.

Mr. RUSSELL: The log recites as follows: "Thursday, July 19th, 1894"——

Mr. CARVER: This is where it begins.

Mr. RUSSELL: "12 o'clock, strong, southwest wind. Friday"—that is midnight—oh, this is land time—"Friday, July 20, strong breeze from the southwest; moderate southwest sea; getting

101 thick around the horizon. 12.30 sets in thick fog. Blowing a whistle. 1 o'clock, changed course to south by west. 2.25 changed course to south-southwest. 3.30 changed course to southwest one-half west. About 4 o'clock a. m. heard one blast of a horn on port bow. Put our wheel hard-a-port, and slowed down and re-

versed engine full speed. Vessel coming right for us. Went ahead on steamer full speed, striking schooner on starboard bow, cutting into her, tearing away her bows; and rescued her crew all safe on board the steamer. Left her in a sinking condition. Last seen of schooner was a small portion of her stern slowly sinking. 4.30 fog lifted. Ship going her course. 5 o'clock clears off fine."

Examination of James Jensen.

Direct examination by Mr. RUSSELL:

Q. 1. What is your full name?
A. James Jensen.
Q. 2. What is your occupation?
A. Seafaring man.
Q. 3. How long have you followed the sea?
A. Seventeen years.
Q. 4. In what capacities?
A. Well, different ones, from sailor up, sailing master and second mate.
Q. 5. How long were you on the steamship Chattahoochee?
A. Seventeen months.
Q. 6. What were you on her?
A. Second officer.
Q. 7. You were second officer July 19 and 20, 1894?
A. Yes, sir.
Q. 8. Were you on deck at the time of this collision?
A. Yes, sir.
Q. 9. What time did you come on deck?
A. Five minutes of four.
Q. 10. Your watch came on deck at four o'clock?
A. Yes, sir.
Q. 11. And where did you go when you came on deck?
A. In the pilot-house.
Q. 12. What was the weather then?
A. Thick, foggy.
Q. 13. You had turned in from twelve o'clock until five minutes to four?
A. Ten minutes to four I was called.
Q. 14. And when you got to the pilot-house it was a thick fog?
A. Yes, sir.
102 Q. 15. What did you first hear or see of this schooner?
A. Well, as I came to the pilot-house and opened the door I heard one blast of a horn on the port bow.
Q. 16. Do you know how it bore on your port bow? How far did it bear on your port bow?
A. Well, I should say about a point and half, as far as I could judge.
Q. 17. That was a single blast?
A. One single blast.
Q. 18. And then you went into the pilot-house?
A. Yes, sir.

Q. 19. The windows were open?

A. Yes, sir.

Q. 20. What did you next hear or see?

A. I stood up on the port side and looked through the window.

Q. 21. What did you hear or see?

A. Well, about a minute after that I saw the sail of a schooner looming up, a topsail schooner on the port bow. I saw her top-gallant-sail first, and gradually all her sails loomed up, but I didn't see her hull.

Q. 22. Did you hear her fog-horn again?

A. No, sir.

Q. 23. Could you tell how fast she was going?

A. Well, by the breeze there was I should think she would be going about seven or eight knots.

Q. 24. What was the breeze?

A. About an eight-knot breeze from the southwest.

Q. 25. What happened after you saw her sails?

A. As soon as I saw her I sung out, "There she is," and the captain immediately ordered the—the wheel was hard-a-port then, and he rung her up full speed ahead.

Q. 26. Was the wheel hard-a-port when you came into the pilot-house?

A. Yes, sir. The first officer and the quartermaster were putting the wheel hard-a-port.

Q. 27. And what signal was given to the engines?

A. Full speed ahead.

Q. 28. And what happened then?

A. Well, it was probably a minute—it was not more—that we struck the schooner.

Q. 29. Where did you strike her?

A. On the starboard bow.

Q. 30. At what angle?

A. Well, about an angle of—pretty near at right angles—very near; slightly leading forward, glancing forward.

103 Cross-examination by Mr. CARVER:

X Q. 31. You say that you were just going into the pilot-house when you heard the signal?

A. Yes, sir.

X Q. 32. How was the wind?

A. Southwest.

X Q. 33. And your boat was going about into the wind?

A. Yes, sir; we were going southwest half west.

X Q. 34. In other words, the wind was a little bit on your port hand?

A. It was, because the wheel was hard-a-port then, and she was swinging; we were swinging.

X Q. 35. But before you came round it was a little on your starboard bow?

A. Well, perhaps it was. You can't tell within half a point, you know.

X Q. 36. What did you do when you came on deck? What was the first thing you did?

A. Well, I went right to the pilot-house and opened the door to go in there.

X Q. 37. How long do you think it was from the time you left the under deck until you got to the pilot-house?

A. Well, half a minute or less than that. My room is very nigh to the pilot-house.

X Q. 38. Where is your room?

A. About fifteen feet from the pilot-house, on the port side.

X Q. 39. How long had you been awake before this?

A. Ten minutes to four I was called.

X Q. 40. And then you dressed and went in there?

A. Yes, sir

X Q. 41. Did you see any of your watch on deck when you went into the pilot-house?

A. No, sir; my watch hadn't come on deck then.

Examination of Frederick Wall.

Direct examination by Mr. RUSSELL:

Q. 1. What is your full name?

A. Frederick Wall.

Q. 2. Where do you reside?

A. Boston.

Q. 3. What is your occupation?

A. Sailor.

Q. 4. How long have you followed the sea?

A. Eleven years.

Q. 5. Were you on the Chattahoochee last July?

A. Yes, sir.

104 Q. 6. What were you on her?

A. A seaman.

Q. 7. When did you join her?

A. In May.

Q. 8. May, 1894?

A. Yes, sir.

Q. 9. Were you on the voyage from Boston to Savannah on the 19th of July?

A. Yes, sir.

Q. 10. And when did your watch come on deck that night?

A. At twelve o'clock.

Q. 11. Did you remain on duty on deck until four?

A. Yes, sir.

Q. 12. Until after the collision?

A. Yes, sir.

Q. 13. What did you do when you first came on deck at twelve?

A. I was on the main deck from twelve to two.

Q. 14. What were you doing after two o'clock?

A. I went on lookout at two o'clock.

Q. 15. Where did you stand on lookout?

A. Upon the grating, the lookout grating. There is a lookout grating.

Q. 16. That runs across a ship on the stem of the vessel?

A. Yes, sir.

Q. 17. On the forecastle head?

A. Yes, sir.

Q. 18. And what did you do there between two and four o'clock?

A. I was keeping lookout for vessels.

Q. 19. Walking across the ship?

A. Across the ship; yes sir.

Q. 20. How long is that grating?

A. About ten feet; ten or twelve feet.

Q. 21. Did you hear any fog-horn that night?

A. Yes, sir; I *I* heard a fog-horn about half past two, I think.

Q. 22. After that did you hear another?

A. I heard one at seven minutes to four.

Q. 23. How do you fix the time?

A. By striking one bell to call the watch at ten minutes to four o'clock, shortly after that.

Q. 24. And one bell means what?

A. To call the watch.

Q. 25. It was sounded at ten minutes to four?

A. Yes, sir.

Q. 26. And what did you hear then?

A. I heard a fog-horn on the port bow.

Q. 27. How many blasts did you hear?

A. One blast.

Q. 28. One single blast?

A. Yes, sir.

105 Q. 29. How far was it on your port bow?

A. Oh, about three-quarters of a point or a point.

Q. 30. Did you report it?

A. Yes, sir.

Q. 31. What did you say?

A. A fog-horn on the port bow.

Q. 32. Was any reply made from the pilot-house?

A. Yes, sir; the first officer answered me.

Q. 33. What did he answer you?

A. All right.

Q. 34. What did you see after that?

A. About a minute after that I saw the schooner coming up on the port bow.

Q. 35. Did you hear the fog-horn again after the first blast?

A. No, sir.

Q. 36. What did you see of the schooner?

A. I saw her sails first, and afterwards I saw her hull.

Q. 37. You saw first the sails, and then the hull?

A. Yes, sir.

Q. 38. Did you see how fast she was going?

A. I think about seven or eight knots.

Q. 39. Was she making a fuss in the water under her bow?

A. Yes, sir.

Q. 40. Was she going faster or slower than the steamer?

A. I think she was going faster than the steamer.

Q. 41. Did you notice whether the steamer had slackened her speed or not at that time?

A. I couldn't tell you. I don't know whether she had slackened her speed or not.

Q. 42. Did you notice whether she was swinging to starboard or not?

A. Yes, sir.

Q. 43. Was she swinging to starboard or not?

A. Her wheel was to port all the time.

Q. 44. Could you see whether she was swinging to starboard after you saw the schooner?

A. Yes, sir.

Q. 45. And then what did you see after that?

A. The collision.

Q. 46. How soon after?

A. Not quite a minute.

Q. 47. How many times did you hear the schooner's fog-horn before the collision?

A. Once.

Q. 48. Only this one time that you reported?

A. Yes, sir.

106 Cross-examination by Mr. CARVER:

X Q. 49. You say that you were standing on the lookout grating?

A. Yes, sir.

X Q. 50. How far is that from the stem of the steamer?

A. About fifteen feet, or say fifteen feet or eighteen feet from the stem.

X Q. 51. And how high a rail has the steamer?

A. About three foot.

X Q. 52. About three feet high. About how high does it come up on your body when you are right alongside of it?

A. About to here (pointing).

X Q. 53. Where was the capstan? Were you forward or aft of the capstan?

A. I was forward of the capstan. The capstan was aft of me.

X Q. 54. Now, you say that at ten minutes before four you rang the bell?

A. No, sir; the quartermaster rang the bell.

X Q. 55. And how far was the bell from where you were?

A. About fifty to sixty feet.

X Q. 56. Where was it—forward or aft of you?

A. Aft.

X Q. 57. Was your steamer blowing her whistle all the time?

A. Yes, sir.

X Q. 58. At regular intervals?

A. Yes, sir.

X Q. 59. And the whistle of the steamer, was it a loud whistle?
A. Yes, sir; a very loud whistle.
X Q. 60. How fast do you think the steamer was going herself before you reported this whistle?
A. I don't know how fast she was going.
X Q. 61. Well, how fast do you think?
A. Well, I think about nine or ten knots.
X Q. 62. When you were keeping lookout you walked from one side of the vessel to the other?
A. Yes, sir.
X Q. 63. You didn't stay in one place all the time?
A. No, sir.
X Q. 64. On which side of the vessel were you when you heard this blast?
A. Right amidships.
X Q. 65. Had you been standing there any time?
A. No, sir; I was walking across the deck
107 X Q. 66. You were walking across. Well, as soon as you heard this blast you at once reported it, didn't you?
A. Yes, sir.
X Q. 67. And how with reference to your steamer's whistle did you hear the blast? Had the steamer just blown her whistle?
A. Yes, sir. She had just got through blowing when I heard the blast of the schooner.
X Q. 68. When the whistle of the steamer was blown, did she blow a long blast?
A. Not a very long blast.
X Q. 69. Well, take this sound that you heard,—what did it sound like?
A. Like a fog-horn.
X Q. 70. Like a fog-horn. And was it as loud as the steamer's blast?
A. No, not quite as loud.
X Q. 71. Did you hear this sound loud, or did it appear faint when you heard it?
A. I heard it pretty loud the first I heard it.
X Q. 72. What?
A. I heard it pretty loud.
X Q. 73. When you first heard it?
A. Yes, sir.
X Q. 74. Did you hear it more than once?
A. No, sir; it was one short blast.
X Q. 75. Well, you say that when you first heard the blast—when first you heard the blast——
A. Yes.
X Q. 76. It sounded rather faint?
A. No, sir; the first I heard of the blast it was pretty loud.
X Q. 77. It was pretty loud when you first heard it?
A. Yes, sir.
X Q. 78. Did you hear it the second time?
A. No, sir.

X Q. 79. Well, then, what do you mean when you say when you first heard it?
A. When first I heard the blast it was a pretty loud blast.
X Q. 80. Well, did you hear it more than once?
A. No, sir; only once.
X Q. 81. Did you hear more than one blast?
A. Only one blast.
X Q. 82. And you only heard one blast once?
A. Yes, sir.
X Q. 83. What did you mean by saying when you first heard the blast?
A. When first I heard the blast I heard it loud, quite a sound.
X Q. 84. And it seemed to be right near to you?
A. Sir?
108 X Q. 85. Did it seem to be right near to you?
A. Near to us?
X Q. 86. Yes.
A. Yes, sir; it was pretty near to us.
X Q. 87. How far off do you think it was when you heard it?
A. I couldn't tell you.
X Q. 88. Did you hear another blast just as soon as the steamer struck?
A. I heard a blast after we got the crew on board; about ten minutes afterwards I heard a blast on the port beam.
X Q. 89. How did that blast sound—like the first one you heard?
A. No, sir.
X Q. 90. A different kind of a fog-horn, was it?
A. Oh, I don't know the kind of a fog-horn.
X Q. 91. A different kind of a blast, was it?
A. Yes, sir; three blasts.
X Q. 92. It was three blasts, the second you heard?
A. Yes, sir; about ten minutes past four.
X Q. 93. That was after the collision?
A. Yes, sir.
X Q. 94. Did that sound as loud as the other blast that you heard?
A. No, sir.
X Q. 95. It was not as good a blast, was it?
A. No, sir.

Examination of Thomas E. Jones.

Direct examination by Mr. RUSSELL:

Q. 1. What is your full name?
A. Thomas E. Jones.
Q. 2. What is your occupation?
A. Seaman, sir.
Q. 3. How long have you followed the sea?
A. About twelve years.
Q. 4. Were you on the Chattahoochee last July?
A. I was, sir.
Q. 5. What were you on her?

A. Quartermaster.
Q. 6. When did you join her?
A. Last October a year ago, sir.
Q. 6½. In October, 1893?
A. Yes, sir.
Q. 7. Always been quartermaster on board of her?
A. Since I was aboard of her I was quartermaster; yes, sir.
Q. 8. And you were quartermaster at the time of this collision?
A. Yes, sir.
109 Q. 9. When did you come on duty?
A. Two o'clock.
Q. 10. And where did you go?
A. Sir?
Q. 11. Where did you go?
A. In the pilot-house, at the wheel.
Q. 12. And you kept the wheel how long?
A. Until ten minutes past four.
Q. 13. Before four o'clock who were in the pilot-house?
A. The captain and the first mate, sir.
Q. 14. Did the second mate come in?
A. I didn't see the second mate; no, sir.
Q. 15. Now, while you were in the pilot-house before four o'clock did you hear any fog-horn?
A. Yes, sir; after I had struck one bell—well, probably three or four minutes.
Q. 16. You struck the one bell, did you? What was that for?
A. Yes. That was to recall the watch, ten minutes of four.
Q. 17. That was ten minutes to four by your clock?
A. Yes, sir.
Q. 18. That was standard time?
A. We ran seventy-five meridian time. That is the same time they all use on shipboard.
Q. 19. And how soon after that did you hear the fog-horn?
A. Perhaps four or five minutes, or three minutes.
Q. 20. What did you first hear?
A. One blast.
Q. 21. Where?
A. About a point on her port bow.
Q. 22. Did you receive any order then?
A. Yes, sir.
Q. 23. What?
A. The lookout sung out, "There is a blast on the port bow," and the mate sung out to the captain, and the captain says, "Hard-a-port."
Q. 24. What did you do?
A. I put my wheel hard to port.
Q. 25. Right off?
A. Right straight off.
Q. 26. Was any other order given in the pilot-house or signal made?
A. To me?

Q. 27. To the engine.
A. Yes, sir; the captain reversed the ship.
Q. 28. What order did he give—what signal did he make?
A. He struck four bells.
Q. 29. And that means what?
A. That means to go astern; from going ahead to going astern.
110 Q. 30. How long did you keep your wheel hard over to port?
A. I kept her there until after we were clear of the schooner.
Q. 31. How were you steering before you made your change of the wheel?
A. What course were we on?
Q. 32. Yes.
A. Southwest half west.
Q. 33. Did you notice how you were heading at the time of the collision?
A. Yes, sir.
Q. 34. How was it?
A. The captain was on the bridge; he asked me how she was heading, and I said, "She is heading north-northwest."
Q. 35. How did you know?
A. The compass was right in front of me.
Q. 36. She was heading then north-northwest?
A. Yes, sir.
Q. 37. Did you see the schooner before you struck her?
A. I did; yes, sir.
Q. 38. How long before?
A. Well, I don't believe it was a moment. I couldn't judge exactly the time. She was just about a ship's length from us.
Q. 39. How fast did she seem to be going?
A. Well, I couldn't tell, only just about the breeze there was.
Q. 40. What kind of a breeze was there?
A. Well, I should judge about a six or eight knot breeze for a sailing vessel.
Q. 41. Was the sea smooth?
A. Yes, sir; it was nice smooth water.
Q. 42. You struck the schooner where?
A. We struck her on the starboard bow, just aft of the topgallant forecastle.
Q. 43. At what angle?
A. Oh, I should judge about a right angle.

Cross-examination by Mr. CARVER:

X Q. 44. How were you heading before you got the order hard-a-port?
A. Southwest half west, sir.
X Q. 45. And then you say you put your helm hard-a-port?
A. The captain says, "Hard-a-port," and I put my wheel right over, sir.

X Q. 46. How were you heading when you struck the schooner?

A. When we struck the schooner?

111 X Q. 47. Yes.

A. After we had struck the schooner just——

X Q. 48. I didn't ask you that. You have told us that; but when you struck the schooner, how were you heading?

A. Well, I don't think we were heading much, if anything, to the southward of west anyway. It was between northwest and north-northwest.

X Q. 49. I guess, Mr. Quartermaster, you don't mean that. You said you were heading southwest half west before you put your helm hard-a-port?

A. Yes, sir.

X Q. 50. And then you put your helm hard-a-port?

A. Yes, sir.

X Q. 51. And then you struck the schooner?

A. Yes, sir.

X Q. 52. Now, how do you think you were heading at the time you struck the schooner?

A. Well, I don't think that we had swung any to the northward—well, we might have swung a point; I don't think we did; for just then the captain says—the captain was on the bridge there, and Captain Savage says to me, "How is she heading?" Both captains were there then; the captain of the schooner was on the bridge with our captain.

X Q. 53. At the time that the two vessels struck, how do you think your steamer was heading?

A. Well, it was just about—it was less than a minute, I should judge, after the steamer had struck the schooner. The captain of the schooner was up on the bridge with our captain.

X Q. 54. Then you don't know how you were heading when they struck?

A. Just when the order was given; yes, sir—when the captain asked me the time.

X Q. 55. But at the time when you struck the schooner you don't know how the steamer was heading, do you?

A. She was not heading anywhere to the southward of northwest by north. She didn't come up any more than a point, I don't think—she couldn't in that length of time—between then and when he asked me.

X Q. 56. You mean she was not heading to the west of northwest by north, don't you?

A. I mean to the westward. That is what I said.

X Q. 57. I understood you to say to the southward. That was after Captain Page of the schooner was in the pilot-house?

112 A. Yes, sir; he was there about the same time she struck, almost; he jumped quick.

X Q. 58. Do you think when they struck they struck at about right angles?

A. Well, I should judge very near that way.

X Q. 59. How long do you think it was from the time that you heard the report of this blast until the time the collision took place?

A. From the time I heard the blast?

X Q. 60. Yes.

A. Oh, three or four minutes; something like that; I couldn't say exactly.

X Q. 61. How many times did your steam whistle sound during that time?

A. Well, I pulled the whistle just about once a minute, as near as a man can judge.

X Q. 62. You were the person who blew the whistle on the steamer?

A. Yes, sir; when it was my watch at the wheel.

X Q. 63. And you think at that time you blew this whistle about once every minute?

A. Yes; as near as a man can judge. Of course it is dark.

X Q. 64. Well, when that whistle is sounding, you can't hear any fog-horn of a vessel outside, can you, when the whistle is sounding?

A. Oh, I don't know about that, I am sure.

X Q. 65. Have you ever tried to see whether you could or not?

A. If we hear a fog-signal we are very particular not to sound ours until the other blast is done.

X Q. 66. You are very particular, in case you hear the sound of a fog-whistle, not to blow your whistle until the other sound is done?

A. Not for both vessels to blow at the same time.

X Q. 67. You think if you blow both vessels at the same time you couldn't hear the other whistle, do you?

A. Well, it is according to the distance they are from us.

Examination of John Henry.

Direct examination.

By Mr. RUSSELL:

Q. 1. What is your full name?

A. John Henry.

Q. 2. What is your occupation?

A. I am an engineer, sir.

Q. 3. Were you the chief engineer of the Chattahoochee at the time of the collision?

A. Yes, sir.

113 Q. 4. How long had you been on the Chattahoochee?

A. I have been on her ever since she was built, going on thirteen years.

Q. 5. You have been her chief engineer?

A. Yes, sir.

Q. 6. And you were chief engineer on this voyage from Boston, on the 19th of July last?

A. Yes.

Q. 7. Now, during that night or morning, when did you come on duty?

A. Well, in foggy weather I am on duty all the time. We have engineers enough to stand the watch.

Q. 8. Were you in the engine-room about four o'clock?

A. Yes, sir; when the whistle was blowing I went down below. I went into the engine-room about ten or fifteen minutes before that.

Q. 9. How long had you been out before that?

A. I go out backwards and forwards all the time, around the ship.

Q. 10. Did you go out again from that time until after the collision?

A. No, sir.

Q. 11. From that place can you see out on the water?

A. No, sir.

Q. 12. Did you receive any orders from the pilot-house during that time?

A. Yes, sir; I received four bells, which means one to slow, another one to stop, and two to go back.

Q. 13. Do you know when you received that signal?

A. Yes, sir; it must have been six to seven minutes to four.

Q. 14. What did you do when you got the signal?

A. Turned her right back.

Q. 15. What effect has that on the steamer?

A. Well, it checks her, of course. We always back as strong as we can in foggy weather, without any signal to go back strong.

Q. 16. Did you get any order after that?

A. Yes, sir; we got an order soon afterwards to go ahead.

Q. 17. What did you do then?

A. Started ahead again.

Q. 18. At full speed?

A. Yes, sir.

Q. 19. How soon after that was the collision?

A. Well, it was close together—I don't think it had any effect on her.

Q. 20. You didn't see anything of this schooner?

A. No, sir.

Q. 21. You didn't come out on deck until after the collision?

A. No, sir.

Q. 22. Have you got the engineer's log?

A. Yes, sir.

114 Q. 23. Where is it?

A. The captain has it there on the table.

Q. 24. Was this kept by you?

A. Well, I copied it off; yes, sir.

Q. 25. "Thursday, 3.45, sailed from Boston"—what is that? "Draught of ship, 17 aft, 16.6 forward."

Mr. CARVER: Start with Friday.

Mr. RUSSELL: "3.55 a. m., stopped engine and backed; struck vessel in bow, and sunk her. Head wind with fog."

Q. 26. Now, at that time you were making how many revolutions, on the average, during the night?

A. Sixty-two.
Q. 27. And at two o'clock you were making 65.8?
A. Yes, sir.
Q. 28. And at three o'clock your average was sixty-five?
A. Yes, sir.
Q. 29. And at four o'clock your average was 60.8?
A. Yes, sir.
Q. 30. Was there any reduction in speed?
A. Yes, sir.
Q. 31. And at five o'clock you had come down to 52.3, on the average for that hour?
A. We had slowed.
Q. 32. That means the average between four and five o'clock?
A. Yes, sir.
Q. 33. Do you know how fast that would send the vessel ahead, with the sea as it was at that time?
A. Well, I guess she would go ten miles; between nine and ten miles.
Q. 34. How long would it take you to stop the vessel and get her actually backing through the water?
A. Well, we could stop her headway, I suppose.
Q. 35. How long would it take you to stop her headway?
A. About five minutes, certainly.
Q. 36. Now, after you had stopped her headway you could get her going astern pretty quickly, I suppose?
A. Yes, sir.
Q. 37. You would take the longest time to stop her headway?
A. Yes, sir.
Q. 38. Had her headway stopped before the collision?
A. I don't think so; no, sir.
Q. 39. Can you tell how much it was retarded before you
115 started up again full speed?
A. I suppose we got her down to five or six miles, or six or seven miles.
Q. 40. How long would it take you to do that?
A. I suppose to back strong, as we did, it would take a minute and a half to check her headway.

Cross-examination by Mr. CARVER:

X Q. 41. I notice there in your log that from three to four you made 60.8 revolutions?
A. Yes, sir.
X Q. 42. That is ahead?
A. Yes, sir.
X Q. 43. Now, what is the pitch of your screw on the Chattahoochee?
A. She is about twenty-two feet.
X Q. 44. And what is your nominal full speed?
A. Well, we run along about thirteen and a half.
X Q. 45. Thirteen and a half to fourteen is about your nominal full speed?

A. Fourteen is about as fast as we can go.

X Q. 46. And when you are making that speed you make how many revolutions—sixty-two or sixty-three?

A. Well, we would have to make sixty-six or sixty-seven, somewhere along there.

X Q. 47. Sixty-six or sixty-seven. The water was smooth that day?

A. Yes, sir.

X Q. 48. You had a full head of steam on?

A. Yes, sir. We don't carry a full head in foggy weather; we carry seventy-five.

X Q. 49. Then if you were making 60.8 revolutions, you would make about twelve knots, wouldn't you?

A. Well, about eleven or twelve.

X Q. 50. Did you ever try to stop this boat by stopping and reversing her?

A. Well, I never timed her; no, sir.

X Q. 51. Did you ever time any boat?

A. I never timed how long it would take.

X Q. 52. Did you ever time any boat as to how long it would take for her to stop and reverse?

A. No, sir.

X Q. 53. When you stop and reverse you turn more revolutions than when you are going ahead, don't you?

A. Well, about the same thing.

X Q. 54. Now, if you were going ahead at twelve knots, and you got the order to stop and reverse full speed astern, how long
116 do you think it would take for your boat to be dead in the water?

A. Well, I should say it would take five minutes to stop her altogether.

X Q. 55. Well, what do you base that on, any experience?

A. Well, by just what we can do coming in.

X Q. 56. Do you know the Gloucester?

A. Yes; we are not so fast a boat as she is.

X Q. 57. Would you stop and reverse more quickly or more slowly than she would?

A. Well, it depends altogether on the wheel.

X Q. 58. How does this vessel of yours compare with the Whitney, the H. M. Whitney?

A. I don't know, sir, how that is.

X Q. 59. Well, at the time that you got the first order to stop, you think you were going eleven or twelve knots, don't you?

A. Yes, sir; I suppose we were.

X Q. 60. You suppose you were going that. Did you feel the shock of the collision?

A. I didn't feel it at all when we hit.

X Q. 61. You didn't feel it when you hit?

A. No, sir.

X Q. 62. Now, how long was it from the time that you got the

order to stop and reverse to the time that you got the order full speed ahead?

A. Well, I suppose a minute and a half, or somewhere around there.

X Q. 63. Have you got any record of it?

A. No, sir.

X Q. 64. No record?

A. No, sir.

X Q. 65. Don't you keep a record of the different orders you get?

A. I do sometimes.

X Q. 66. Sometimes you do, and sometimes you don't?

A. Yes, sir.

X Q. 67. Now, isn't it a fact, Mr. Engineer, that the reason why you didn't put down the order full speed ahead was that it came almost instantly after the order to stop and reverse?

A. Well, yes, sir; it came pretty soon after.

X Q. 68. They came so close together that you didn't make any mention of it?

A. Very close together.

X Q. 69. Very close together?

A. I thought the captain had seen he couldn't clear that way, and he wanted to go the other way.

X Q. 70. You don't think it was over a minute anyway, do you?

A. No, sir.

117 X Q. 71. You think it was nearer than a minute?

A. Well, I should think it was about that time.

X Q. 72. You think it was about a minute between the two orders?

A. Yes, sir.

X Q. 73. And you think it takes five minutes from the time your boat is going full speed ahead to get her dead in the water, if you go full speed astern?

A. Yes, sir.

X Q. 74. Now, I want to know how long it will take your boat to stop, provided you get an order to stop and reverse, and not full speed astern—how long it will take her to get dead in the water?

A. I should think about five minutes.

X Q. 75. I understood you to say that if your vessel was going full speed ahead, and you got the order full speed astern, it would take five minutes to stop her dead in the water?

A. Yes. sir.

X Q. 76. If you didn't get the order full speed astern?

A. We always back full speed astern in foggy weather.

X Q. 77. Then you did go full speed astern?

A. Yes, sir.

X Q. 78. And you didn't obey the order the captain gave you?

A. He didn't ring the jingle bell.

X Q. 79. But you did just the same as though he had rung the jingle bell?

A. Yes, sir; because we know there is some danger.

Mr. RUSSELL: How long did it take you that morning to reverse your engine when you got the order to reverse?

A. Oh, reversed her right away, sir. She has double engines, and we can turn them right back.

GEORGE AUGUSTUS SAVAGE (recalled).

Direct examination by Mr. RUSSELL:

Q. 183. Captain, did you have any conversation with Captain Page after the collision, after he came on your vessel?

A. Yes, sir.

Q. 184. State what it was.

A. He came up and remarked about his losing his vessel, as near as I can remember.

Q. 185. Where was this conversation?

A. On the bridge; I think it was on the bridge. I asked him if he was insured. He says, "Yes, the vessel was insured."
118 "Well," I says, "You'll get your pay for your vessel." I says, "So far as I'm concerned, I am just as well quit. I have taken all the precautions I could. I come outside, out in the bay, and never saw any vessels;" and I thought I was in pretty hard luck. As he said, I felt a good deal worse than he did, and I have no doubt I did.

Q. 186. Did he have any conversation with you in the cabin?

A. Yes; I asked him why he didn't luff his ship up, and he said it was not his place to do so, and I said it was the only——

Q. 187 You asked him what?

A. I asked him why he didn't starboard his wheel, and he said it was not his place to do so; he supposed that we saw him.

Q. 188. Is that all the conversation you had with him?

A. Yes, sir; as far as I can remember.

Further Proofs for Libellants, Now Appellants.

Examination of ENOS W. PAGE (recalled).

Direct examination by Mr. CARVER:

Q. 355. Captain Page, with regard to when you saw the steamer, was there anything that in your opinion could have been done to prevent the steamer from striking you?

A. Nothing. If I had attempted to do anything I might run in his way and be in default.

Q. 356. Now, I want you to put these two models together the way you think the collision took place.

A. That is it.

Q. 357. That is the way they struck?

A. Yes, sir.

Q. 358. Just put them together again.

A. The way they struck?

Q. 359. Assume that the little one is the schooner, and the big one the steamer. Now I want you to put them together just as they struck.

A. I should judge they were at about right angles, as near as I could see. I stood on the lee side, and as near as I could judge they were at about right angles.

(The diagram made by the witness is marked "Exhibit 2, R. H. J., Page.")

Q. 360. When you first saw the steamer did you think
119 there was going to be a collision, when you first saw her?

A. I thought that there probably would, unless she changed her course. When I seen her she was coming right at us. I thought at first she would go by the stern, until I seen her swing to starboard, and then I said, "It is all up with us. There is no clearing."

Cross-examination resumed by Mr. RUSSELL:

X Q. 361. You saw her swing to starboard as soon as you saw her at all, didn't you?

A. No, sir.

X Q. 362. How long did you see her before she began to swing to starboard?

A. Oh, well, it is hard to judge the time, but I seen her coming head on for—well, we will say half a minute—half a minute will seem quite a little time in a time like that.

X Q. 363. And then you saw her swing to starboard?

A. Yes; then I saw her turn and swing to starboard.

X Q. 364. How long did she continue to swing to starboard before the collision?

A. Well, I suppose it was not a minute. She hadn't swung very much.

X Q. 365. Not a minute, you say?

A. No, it was not a minute.

X Q. 366. How long did you think it was?

A. It was—well, nearly a minute, I should say.

X Q. 367. Nearly a minute that she was swinging to starboard, and she continued to swing to starboard until she struck you?

A. Until she struck us.

X Q. 368. And you continued to hold your course?

A. To hold our course.

X Q. 369. When did she first begin to luff?

A. When we first sighted her through the fog, before we could see what course she was on at all.

X Q. 370. It never occurred to you that you could do anything by changing the course of your wheel?

A. No, sir; we didn't know what she was going to do.

X Q. 371. You did know what she was doing after she began to swing?

A. Yes, sir.

X Q. 372. That was about a minute before the collision?

A. Yes, sir.

120 X Q. 373. And during that time you persisted in keeping your course straight?

A. Yes, sir.

Mr. RUSSELL: That is all.
Mr. CARVER: That is all.

121 United States Circuit Court of Appeals for the First Circuit, October Term, 1895.

THE CHATTAHOOCHEE—ABRAM W. HENDRY *et al.*, Libellants, Appellants,
v.
OCEAN STEAMSHIP COMPANY, Claimant, Appellee. } No. 171.

Appeal from the district court for the district of Massachusetts.

Before Colt, Putnam, and Webb, JJ.

Opinion of the Court, June 12, 1896.

PUTNAM, *J.*:

We agree with the findings of fact and the conclusions of the district court in this case.

This collision occurred about four o'clock on the morning of July 20, 1894, south of Nantucket shoals, between the steamer Chattahoochee, of 1,887 tons register, an enrolled vessel of the United States, bound from Boston to Savannah, and the British topsail schooner Golden Rule, of about 200 tons net register, deeply loaded with a cargo of sugar and molasses, and bound from Porto Rico to Boston. The Chattahoochee left Boston on July 19, and, the
122 weather being foggy, she decided to go outside rather than take the regular course through Vineyard sound. The vessels, therefore, while not in the most frequented track, were still in coast waters resorted to by the coastwise traffic. In addition thereto, the master of the schooner testifies that he supposed he was just about out of the line of ocean steamers—meaning by this the Atlantic liners. Considering the prevalence of the fog which occasioned the collision, he could not fairly put it more positively than this. Therefore, the vessels were navigating waters to which a due regard for human life requires a strict application of the statutory rule of "moderate speed" in a fog or mist.

That there was a fog at the time of the collision, which set in at least an hour before, is not disputed. Its density is. It was a low fog, so that the Golden Rule claims that she saw the masts of the steamer two thousand feet away prior to the collision. It was probably a surface fog, which the masts of the steamer rose above, but which concealed the schooner. The hull of the schooner was white, which also may have aided to conceal her. But, however this may have been, there was a fog of such character that it led to a misunderstanding of signals and courses, which would have been avoided if either vessel had been proceeding at a moderate speed, and much more so if both vessels had complied with the rule; and this is a practical test that the fog was such as the rule contemplates

with reference to the reasonable exigencies of safety. This is illustrated by a consideration of the circumstances of the collision. The wind is said to have been from the southwest. The schooner was headed north by east, one-half east; so she sounded three blasts of her horn as for a sailing vessel with the wind abaft the beam. There can be no doubt that this was heard aboard the steamer as a single blast, as for a sailing vessel on the starboard tack. Consequently the steamer, hearing the horn on her port bow, went
123 to her own starboard, and reduced her speed four or five miles an hour, which would surely have prevented a collision if the schooner had been on her starboard tack. The steamer heard the signal from the schooner only once, at the most twice; while, if the vessels had been proceeding at a moderate speed, there would have been time enough for the repetitions of the schooner's horn to have corrected the error arising from the transmission of the blasts, the steamer might have reversed or gone more to starboard, and the collision would have been avoided. A moderate speed on the part of the schooner would have so far extended the time for the steamer's maneuvers, which she commenced promptly, as to have made them successful; and this is one of the main purposes of the statutory regulation on this point. The Zadok, 9 P. D., 114, 115.

The district court found the steamer guilty of excessive speed; and, as she did not appeal, she stands so charged in this court. The schooner was under all sail except the lower half of her square sail. Her rig gave her a very large spread of canvas, which made her fast on the course she was sailing. She was practically free, and her master admits that she was making between five and six knots. Other witnesses claim more. However this may have been, it is very plain that she was making substantially all the speed she was capable of, and that she could easily have shortened sail materially when she struck the fog, and yet have kept her steerage way, and all the way necessary for all maneuvers which could reasonably have been anticipated.

The schooner refers to The Martello, 39 Fed. Rep., 505, as supporting the proposition that her speed was not a contributing fault; but this question is one of pure fact, as to which The Martello, even if it had not been reversed by the Supreme Court—The Martello, 153 U. S., 64—would not assist. The learned judge who decided that case in the circuit court seems nevertheless to have re-
124 viewed the decisions as to the speed of sailing vessels in a fog; and he summarized them to the effect that, while a speed of four knots at the entrance of New York bay might not be excessive, yet that, in the instances in which sailing vessels have been held in fault, their speed was "five knots or over." This, on her own admission, was the speed of the Golden Rule. The schooner also relies on The Morning Light, 2 Wall., 550; but if that was a case of navigation in a fog, the collision occurred in 1855, and before the international rules of 1864—now Revised Statutes, sec. 4233—the first legislation on the topic. The Nacoochee, 137 U. S., 330, is also relied on; but the most claimed for that case is that the vessel involved was sailing only four knots, while the opinion, at page 341,

shows that the court did not pass on the point. The Elysia, 4 Asp. N. S., 540, decided in the court of appeal in 1882, where the vessel was sailing "out in the Atlantic ocean," about 49° N. and 30° W., "somewhere about five knots, probably less, certainly not more," if it has any application, has been superseded by the current of later and more authoritative English decisions.

In The Colorado, 91 U. S., 692, 696, the sailing vessel was held not in fault, but the court observed that all her light sails and her foresail had been furled. In The Zadok, 9 P. D., 114, 117, decided in 1883, Sir J. Hannen found the barque was going, "faster than five knots," and he said:

"On this case it is proved that the Zadok, if she had not literally every stitch of canvas set, yet had very nearly all the canvas she could carry; and I come to the conclusion, therefore, that she was going at a speed which, in the circumstances, was not moderate, and therefore that she has infringed the rule."

In The Beta, 9 P. D., 134, decided in 1884, in the court of appeal, the master of the rolls said:

"Then we come to the case of the Beta—the sailing vessel. Art. 13 uses the words 'moderate speed,' and the interpretation of these words must depend on the density of the fog, for a speed which may be moderate in a fog through which daylight appears, is not a proper speed in a dense fog in which nothing can be discerned. Now in the present case speed other than would allow this sailing vessel to keep her steerageway was not moderate. In fact, the Beta had ail plain sail set; and then the question arises, was this more than enough to keep her under reasonable control. Our assessors think that it was."

The Beta was condemned as in fault. The Dordogne, 10 P. D. 6, decided in 1884 by the court of appeal, contains this dictum as to the duty of a sailing vessel after she has heard a fog signal at sea, at page 12:

"To a sailing ship art. 18 does not apply, because she cannot stop and reverse, but she ought, if she is under full sail, to take sail off till she brings herself as nearly to a standstill as is possible whilst being under command."

In the N. Strong, (1892) p. 105, 108, it was said by Jeune, J.:

"Putting all these things together, it seems to me on the whole that the rate of speed which is to be attributed to the sailing vessel is something about four knots. Now, if that is so, was that too much? The law on the subject is quite clear. A sailing ship is entitled to move at such a rate of speed as will enable her to keep properly under command; and I agree with, and accept, the decisions which go to the effect that what is properly under command varies, and that, under some circumstances, a vessel may be entitled to go at a higher rate of speed than in others. I agree that whether the position of the vessel is in the open sea, or in a river like the Thames, or off a difficult coast, is a matter which has to be taken into consideration. Now, it appears to me that that is a matter on which the advise of the Trinity masters is of great importance. I do not profess myself to be able to say what rate of speed a sailing

vessel should have in order to keep well under command; but the Trinity masters have considered the matter, and they tell me that if the speed of the vessel was about four knots, as I have found it to be, they do not think any blame attaches to the vessel for that rate of speed."

126 We believe we have referred to all the decisions cited by either party, having sufficient authority to guide us; and while, for very apparent reasons, the law does not in all respects apply so strict rules to sailing vessels as to steamers, yet the current of the decisions fails to justify the Golden Rule in proceeding with practically all sail set after she entered the fog, and even after she heard the steamer's whistle.

We will consider some other propositions made in behalf of the Golden Rule. The rule as to the presumption when one vessel is found in fault by uncontradicted testimony, or is otherwise clearly in fault, stated in The City of New York, 147 U. S. 72, 85, and in The Oregon, 158 U. S. 186, 197, relied on by the schooner, has no application to this case, where the question of fault on each side is for the determination of the court from facts easily ascertainable. The Golden Rule also sets up a claim that admiralty permits an apportionment of damages according to the differing degrees of negligence of the two vessels, instead of in moieties, and cites The Victory, 68 Fed. Rep. 395. If that case is to be construed as claimed by the schooner, and if, on the strength of it, we could ever be called on to re-examine the *rusticum judicium* of the admiralty, which for a long period, in collision cases, has without exception, both in the United States and England, unless in the Victory, divided damages equally where there was mutual fault, we could not be thus called on in the present case, where the fault of each vessel was of precisely the same character, and also practically of the degree of which each was capable according to its capacity for speed, though with neither to the extreme limit thereof.

The Golden Rule was sunk and wholly lost through the collision, with her cargo. The cargo owners were entitled by the general admiralty rules to a decree for their entire loss against the steamer.

127 Both vessels being in fault, the district court, on the well settled rule, allowed the steamer, which was not damaged, to recoup against one-half of the value of the schooner, one-half of the value of the cargo, still leaving a net balance for which a decree was made in favor of the schooner, her officers and crew, after fully satisfying and paying the loss to the cargo owners. In this way the schooner indirectly suffers the loss of one-half of the value of the cargo, though it was by diminution of the damages awarded her. She claims that this was in violation of section 3 of the act of February 13, 1893, 27 Stat. 445, c. 105, commonly called the "Harter act."

We are not referred to any allegations or evidence that the terms of that section were complied with by the owners of the Golden Rule, in that it imposes, as a condition, that the owners shall have exercised due diligence to make the vessel in all respects seaworthy, and properly manned, equipped and supplied. But passing by this

while the statute in question, by its letter, applies to any vessel "transporting merchandise or property to or from any port in the United States," we are not prepared to determine that its benefits were intended to extend to foreign vessels; if it does, the result of the schooner's proposition would be that a provision of statute, historically known to have been intended for the encouragement of our domestic commerce, doubles, in the present case, the burden which the general admiralty law imposes on a domestic vessel, for the sole benefit of the owners of a foreign one.

The Delaware, 161 U. S. 459, 471, holds that the statute in question has no relation to the claim for the loss of the schooner herself, although its mere letter may be broad enough to cover it. The general purview of the statute limits it to the relations between a vessel and her owners and the cargo aboard and its owners, and merely gives a statutory bill of lading, as was said, partly in
128 terms and partly in effect, in the Delaware. It has no proper relation to claims between colliding vessels, nor to the *rusticum judicium* of the admiralty, which established the rule by which such claims are divided in case of mutual fault; nor, consequently, to the qualification of that rule by means of which the net damages are diminished by recoupment. The liability to which the statute appertains is that arising from a bill of lading, or other contract of carriage; while that with which we are dealing comes from the relations of colliding vessels to each other, and is precisely the same as though the cargo lost had been the lading of a third vessel involved in the collision, but in no way at fault.

The North Star, 106 U. S. 17, decided at the October term, 1882, seems to settle the law, at least for all cases like this at bar, where there can be or is no decree for a net balance against the vessel whose cargo is damaged or lost. The substantial effect of that decision is well stated by the reporter in the head-notes, to the effect that the statute limiting liability there under consideration is not to be applied "until the balance of damage has been struck." The court, at page 22, lays down the principle which we have already stated, that, in cases of mutual fault, the assessment of damages is not strictly a setting off of claim against counter-claim, but a mere modification of the usual admiralty rule of the division of them. It uses the following language:

"These authorities conclusively show that, according to the general maritime law, in cases of collision occurring by the fault of both parties, the entire damage to both ships is added together in one common mass and equally divided between them, and thereupon arises a liability of one party to pay to the other such sum as is necessary to equalize the burden."

The court also, at page 28, illustrates the practical inequity which we have pointed out as inhering in the rule claimed by the
129 Golden Rule, when applied to the case at bar, in that it relieves one vessel by doubling the burden laid on the other. It says:

"It would enable the owners of the 'Ella Warley' to obtain full compensation for a moiety of their loss, whilst the owners of the

'North Star' would have to sustain both their own entire loss and half of that of the owners of the 'Ella Warley,' whilst both vessels were alike to blame for the collision. A rule which leads to such results cannot be a sound one."

The North Star was reaffirmed, in the particulars as to which we have considered it, in The Manitoba, 122 U. S., 97, 110, 111. As the statute limiting liability which those cases had under consideration is admittedly of general application, the question could not arise under it which may under some other circumstances arise under the "Harter act," that is, whether the benefits conferred by the latter statute can, under any conditions, be extended to affect the relations existing under the general admiralty law between two vessels in collision. It does, however, on any construction of the statute in issue here, go to the extent of meeting the case at bar, in which there is no decree against the vessel whose cargo suffered, as we have already explained.

In The Stoomvaart Maatschappy Nederland *v.* The Peninsular and Oriental Steam Navigation Company, 7 Apps. Cas. 795, where the House of Lords, in 1882, finally laid down the same rule as was determined in the North Star, the lord chancellor, at page 801, said:

"The question is whether there are, in these cases, two cross-liabilities in damages, of each shipowner to the other for half the loss which that other has sustained, or only one liability, for a moiety of the difference of the aggregate loss beyond the point of equality."

This question the house answered, as did the supreme court, to the effect that there was in substance "only one liability." Lord Blackburn, at page 819, noticed the inequity flowing from a different answer as we have noticed it, saying:

130 "This rule," meaning the general admiralty rule of the division of damages, "has been stigmatised as '*judicium rusticorum*,' and is justified on the ground of general expediency, avoiding interminable litigation at the cost of some inevitable injustice in particular cases. But if the recompense in damages, which the one ship is to make to the other, is to be considered as quite a distinct thing from that which the other is to make to it, this injustice is increased in a manner which is not only not inevitable, but which, as it seems to me, it requires some subtle and technical reasoning to bring about."

We need not, on this part of the case, note the English decisions further, some of which are referred to in Marsden's Collisions at Sea, 3rd ed., 138, and sequence, and 179. The compulsory pilotage cases are not in point, as the ships on which the pilots were employed were wholly relieved, and the pilots alone were liable. On the whole, we are clear the "Harter act" affords no ground for any assignment of error in this case.

The entire amount awarded by the decree of the district court to the owners of the Golden Rule, the master and the other persons serving aboard her, will pay only a small percentage of the total sums adjudged to have been their losses. That decree is open to the construction that the various sums worked into this amount are subject to recoupment *pro rata*. No assignment of error has been

made on this account, but, as seamen are the wards of the court in admiralty, we feel justified in noticing this matter of our own motion. The award for each was one-half of the total damages suffered. We make no suggestion with reference to the division of loss in this particular so far as it affects the mate and crew: but, inasmuch as we find that, as between the Golden Rule and her master on the one side and the mate and the crew on the other, neither the mate nor any of the crew were responsible for any fault in her navigation, we direct that the decree below be so
131 & 132 far modified that the several sums awarded the mate and the crew shall be exonerated by, and shall have priority over, the amounts awarded the owners and master.

The decree of the district court must be modified with reference to the matter of distribution between the owners and master of the Golden Rule on the one side and her mate and crew on the other, in accordance with our opinion filed this day, and, with this exception, it is affirmed without interest; the appellee is adjudged its costs in this court; and the case is remanded to the district court for proceedings in accordance with this order.

133 United States Circuit Court of Appeals for the First Circuit
October Term, 1895.

THE CHATTAHOOCHEE—ABRAM W. HENDRY *et al.*, Libellants, Appellants,
v.
OCEAN STEAMSHIP COMPANY, Claimant, Appellee. } No. 171.

Decree, June 12, 1896.

This cause came on to be heard April 15 and 16, 1896, upon the transcript of the record of the district court of the United States, for the district of Massachusetts, filed February 27, 1896, the agreement as to proofs, filed February 27, 1896, and the proofs filed therewith, and was argued by counsel.

On consideration whereof, it is now, to wit, June 12, 1896, ordered, adjudged, and decreed, as follows:

The decree of the district court must be modified with reference to the matter of distribution between the owners and master of the Golden Rule on the one side, and her mate and crew on the other, in accordance with our opinion filed this day, and, with this exception, it is affirmed without interest; the appellee is adjudged its costs in this court; and the case is remanded to the district court for proceedings in accordance with this order.

By the court:

JOHN G. STETSON, *Clerk.*

134 United States Circuit Court of Appeals for the First Circuit.

I, John G. Stetson, clerk of the United States circuit court of appeals for the first circuit, certify that printed pages numbered

1 to 220, inclusive, hereto prefixed, contain and are true copies of a transcript of record of the district court of the United States for the district of Massachusetts, the agreement as to proofs and the proofs referred to in said agreement, the same being the entire record upon which the cause entitled, No. 171, The Chattahoochee, was lately heard and decided in said circuit court of appeals.

I further certify that printed pages numbered 121 to 133, inclusive, hereto prefixed, contain and are true copies of the opinion of said circuit court of appeals announced June 12, 1896, and of the decree of said court entered in accordance therewith.

I further certify that said transcript of record, and other papers named above, remain on file and of record in said cause in said United States circuit court of appeals for the first circuit, and that said pages above named, containing true copies thereof, contain and are a true copy of the record and all proceedings in said cause, in said United States circuit court of appeals, to and including September 30, 1896, and that the issuing of the mandate upon said final decree of June 12, 1896, has been stayed by agreement of parties till the further order of court.

In testimony whereof, I hereunto set my hand and affix the seal of said United States circuit court of appeals for the first circuit, at Boston, in said first circuit, this thirtieth day of September, 1896.

[Seal United States Circuit Court of Appeals, First Circuit.]

JOHN G. STETSON, *Clerk.*

135 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the first circuit, Greeting:

Being informed that there is now pending before you a suit in which Abram W. Hendry *et al.* are appellants and The Ocean Steamship Company, claimant of the steamship "Chattachoochee," is appellee, which suit was removed into the said circuit court of appeals by virtue of an appeal from the district court of the United States for the district of Massachusetts, and we being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals

136 and removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the fifth day of November, in the year of our Lord one thousand eight hundred and ninety-six.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

137 *Return on Writ of Certiorari.*

United States Circuit Court of Appeals for the First Circuit.

And now here the judges of the United States circuit court of appeals for the first circuit make return of this writ by annexing hereto and sending herewith a stipulation between counsel for the respective parties in the cause in the Supreme Court of the United States, wherein this writ of certiorari issued, "that the judges of said circuit court of appeals may make return upon said writ by annexing thereto this stipulation."

Seal United States Circuit Court of Appeals, First Circuit.

In testimony whereof I, John G. Stetson, clerk of said United States circuit court of appeals for the first circuit, hereto set my hand and affix the seal of said court, at Boston, in said first circuit, this tenth day of November, 1896.

JOHN G. STETSON, *Clerk.*

138 The Supreme Court of the United States, October Term, 1896.

ABRAM W. HENDRY *et al.*
v.
OCEAN STEAMSHIP COMPANY, Claimant, etc. } No. 627.

Stipulation.

It is hereby stipulated between counsel for the respective parties to the above-entitled cause that the certified copy of record and all proceedings in this cause to and including September 30, 1896, in the United —— circuit court of appeals for the first circuit, now on file in the Supreme Court of the United States, may be treated as the record and proceedings which the judges of said circuit court of appeals are required to send to said Supreme Court by the writ of certiorari issued herein from said Supreme Court November 5, 1896, and that the judges of said circuit court of appeals may make return upon said writ by annexing thereto this stipulation.

ABRAM W. HENDRY ET AL.,
By their proctors, CARVER & BLODGETT.
OCEAN STEAMSHIP COMPANY,
By its proctor, CHAS. THOS. RUSSELL.

139 [Endorsed:] 16,406. Supreme Court of the United States. No. 246. October term, 1897. Abram W. Hendry *et al. vs.* The Ocean Steamship Company, claimant, &c. Writ of certiorari and return. Office Supreme Court U. S. Filed Dec. 3, 1896. James H. McKenney, clerk.

To the Supreme Court of the United States:

ABRAM W. HENDRY and JOHN MILLARD, of Liverpool, Province of Nova Scotia, Dominion of Canada, petition for a writ of *certiorari* directed to the Circuit Court of Appeals for the First Circuit, to bring before this Honorable Court the case of (the Steamship "Chattahoochee") ABRAM W. HENDRY *et al.*, Libellants, Appellants, *v.* THE OCEAN STEAMSHIP CO., Claimant, Appellee, intervening as owners of the Steamship Company.

Your Petitioners respectfully allege:—

First, That your Petitioners were at the times hereafter mentioned the owners of the British Schooner "Golden Rule," and that the Ocean Steamship Company was and is the owner of the Steamship "Chattahoochee."

Second, That on July 7, 1894, the Schooner "Golden Rule" left the port of Ponce, Island of Porto Rico, loaded with a cargo of sugar and molasses, bound for Boston, Massachusetts.

That on Thursday, July 20, 1894, while about sixty-five (65) miles south of the Island of Nantucket, said Schooner "Golden Rule" was run into and sunk by the Steamship "Chattahoochee," whereby the said Schooner and her cargo became a total loss.

Third, That on July 31, 1894, your Petitioners filed a libel in the District Court of the United States within and for the District of Massachusetts for damages sustained by reason of the collision, in which they alleged that the said collision was caused wholly by reason of the fault and negligence of the Steamship "Chattahoochee" and those in charge of her.

On August 23, 1894, the answer of the Claimant of said Steamship, The Ocean Steamship Company, was filed in said Court, in which it was alleged that the collision was caused solely by the negligence of the Schooner "Golden Rule" and those in charge of her, and that said Steamship was wholly without fault.

Fourth, That thereafter, on February 8th and 9th, 1895, the said case was tried before the Honorable Thomas L. Nelson, Judge of the United States District Court for the said District of Massachusetts, who, on July 18, 1895, delivered an opinion, which opinion is found on pages 137, 138 and 139 of the Record. In said opinion the Steamship "Chattahoochee" was found at fault for the collision for proceeding at more than a moderate rate of speed in a fog, and the Schooner "Golden Rule" was also found at fault for proceeding at more than a moderate rate of speed in a fog, and the damages were divided.

Fifth, That thereafter an appeal was taken by your Petitioners to the Circuit Court of Appeals for the First Circuit. The case came on for argument in said Court, and was heard before Judges Colt, Putnam and Webb, in said Court, and on June 12, 1896, an opinion was filed in which the decree of the District Court was affirmed, the Honorable William L. Putnam delivering the opinion (a copy of which is a part of the Record in this case) which found, viz:—

(*a*) That no appeal having been taken by the Claimant, the Steamship was at fault for proceeding at more than a moderate rate of speed in a fog, which the District Court finds to have been at the rate of eleven (11) miles an hour.

(*b*) That the Schooner "Golden Rule" was also at fault for proceeding at more than a moderate rate of speed in a fog.

Sixth, That the Circuit Court of Appeals for the First Circuit should have found that the rulings of law and findings of fact of the District Court were not warranted

by the evidence, failed to make other rulings and findings that should have been made, among others, —

(1) In finding that the Schooner "Golden Rule" was proceeding at more than a moderate rate of speed in a fog in a place where the collision took place.

(2) In not finding that the negligence of the Steamship "Chattahoochee" was the sole cause of the collision.

(3) In finding that the speed of the Schooner "Golden Rule" in any way contributed to the collision.

(4) In finding that the Act of Congress of February 13, 1893 (Chap. 105), did not in any way change the rule of law in relation to the recoupment of damages in cases of collision, where there was mutual fault.

Seventh, That the said Circuit Court of Appeals for the First Circuit made certain rulings of law in said cause which are different from the rulings of law made by the Supreme Court of the United States and the United States Courts in other Circuits of this country.

Eighth, That a writ of certiorari should issue in this case on the following grounds: —

1. That the Circuit Court of Appeals has held that the Schooner "Golden Rule" was proceeding at more than a moderate rate of speed in a fog.

The Court finds that from five (5) to six (6) knots in a fog is excessive speed for a sailing vessel in the open ocean, *even where the sailing vessel has the right of way*.

WHAT IS A MODERATE RATE OF SPEED FOR A SAILING VESSEL IN A FOG IN THE PLACE WHERE THE COLLISION TOOK PLACE?

We call the attention of the Court to the fact that there is not as yet a reported case where a sailing vessel has been held in fault for going at more than a moderate rate of speed in a fog in mid-ocean.

All reported cases have been those where they were either in narrow channels or in crowded waters.

In the case of the "John Hopkins," 13 Fed. Rep. 185, where a collision took place in a dense fog off Chatham, between a sailing vessel going at the rate of nine knots per hour, and a steamship going at the rate of four knots per hour, the speed of the sailing vessel was held to be excessive in such a frequented place.

In the case of the "Rhode Island," 17 Fed. Rep. 554, Judge Brown held that eight knots was an excessive rate of speed for a sailing vessel in Long Island Sound, near Eaton's Neck. A speed of about five (5) knots was held not to be excessive in the English Channel, near Lizard Light, off the port of Falmouth, where the collision was with a steamer.

In this case the steamer, which was a steam-tug, was going between seven (7) and eight (8) knots, and was held alone in fault. She did not hear a fog signal from the sailing vessel.

The "N. Strong," L. R. (1892), P. Div. 103.

In the case of the "Elysia," 4 Asp. 540, the English House of Lords held that five (5) knots per hour was a moderate rate of speed in a fog for a sailing vessel, with all sails set, off the Banks of Newfoundland, where the steamship was held to blame for going at the rate of eight (8) knots per hour. In that case the steamship's witnesses estimated the speed of the sailing vessel at nine (9) knots.

The Court in that case states that the sailing vessel should be well under command, and that speed in a narrow channel is not to be taken as a test for a sailing vessel.

In the case of the "Nacoochee," 137 U. S. 331, where the collision was off Cape May, the schooner, with all sail set, was going between four (4) and five (5) knots per hour, and the steamship between six (6) and seven (7) knots. The steamship was held alone to blame.

In the case of the "Morning Light," 2 Wall. 550, the Supreme Court of the United States held that a speed of from five (5) to six (6) knots per hour in a fog at night was not a fault for a sailing vessel at the entrance to Vineyard Sound.

In this connection, the language on page 406 of Marsden on Collisions is important: "It is submitted that the decisions as to what is a 'moderate' speed for small sailing ships bear heavily upon such vessels, and that they should not be carried any further."

In the case at bar, the fog was not dense. Those on the schooner saw the steamship quite a distance off, which shows that in this case it was not a thick fog.

In England, the Court has used the following language (Brown, L. J, in "The Beta," L. R. 9, P. Div. 134), in speaking of sailing vessels, viz.: —

"THE TERM 'MODERATE' IS A RELATIVE TERM; IT DEPENDS ON PLACE, ON THE KIND OF SHIP, AND ON THE KIND OF FOG."

The case of the "Zadok" (L. R. 9, P. Div. 114), was the case of a collision in the English Channel, where there were a great many vessels constantly passing.

Here the Court holds that the "Zadok" was in fault under all of the circumstances.

Here there was no fault on the part of the steamer. The Court used the following language, p. 117: —

"Of course, in the case of a sailing vessel, we know that she must have way on to fill her sails, otherwise she will not have the power of controlling her movements."

Again, Sir James Hannon says: —

"Some margin must be allowed for the particular circumstances of the case, and it is not to be said that exactly the same rule would apply *to a sailing-vessel out in mid-ocean*; but when one has to deal with a case like this, of a vessel which is passing across a course in which it is to be expected that numerous vessels may be, it is her duty to reduce her speed, as I have said, to as low a rate as is consistent with her keeping a good steerage way."

In the case of the "N. Strong" (*supra*), the Court says: —

"I AGREE THAT WHETHER THE POSITION OF THE VESSEL IS IN THE OPEN SEA, OR IN A RIVER LIKE THE THAMES, OR

OFF A DIFFICULT COAST, IS A MATTER WHICH HAS TO BE TAKEN INTO CONSIDERATION."

We submit that the speed of the Schooner "Golden Rule" was moderate.

WAS THE SCHOONER "GOLDEN RULE" PROCEEDING AT A MODERATE RATE OF SPEED, UNDER ALL OF THE CIRCUMSTANCES?

The position of the Schooner "Golden Rule" was in mid-ocean; she was out of the usual track of ocean steamships.

Page, Record, p. 22, Int. 87.

The master of the "Chattahoochee" says he went outside to be out of the usual track of vessels.

Savage, Record, p. 81, Int. 23.

The master of the Schooner, who knew that it was his duty to keep clear of all vessels that he should meet, except steam vessels, was bound to keep such speed on his vessel as would enable him to do so.

It seems that he had been considering this when he took in part of his square sail.

In speaking of it he says, Page, Record, p. 21 :—

"Q. 74. How fast do you think you were going at the time of the collision? A. Well, I couldn't judge correctly — between five and six knots. It was smooth. The vessel was standing straight up. I had looked over her side some time before that in regard to her speed, to see whether it was prudent to shorten sail, and I didn't; I considered it was just nice working speed — I could wear ship or tack ship or anything, and my yards were braced for that occasion, in case I met another vessel and she had the right of way."

He thus shows that he had his vessel in such shape as to avoid those which the law required him to avoid.

According to the testimony of her captain, the Schooner "Golden Rule" was sailing only at the rate of speed that,

considering the density of the fog, she could easily avoid any vessel whom she might meet, and which it was her duty under the law to keep clear of. This is the test of moderate speed that has been laid down by the different Courts of this country when applied to steamships.

Ships under sail cannot, of course, stop and reverse as can those under steam, but they must sail at such a rate in a fog that they can manœuvre sufficiently to avoid vessels having as to them the right of way.

Article 13 of the sailing rules applies not merely to a fog, but also to a falling snow, and would be interpreted by the Court to apply to any kind of thick weather.

What then would be the duty of a sailing vessel in a snow storm as to speed ; would she be obliged to take in all her sail? And even under bare poles she might go at a greater rate than eight (8) knots with a gale blowing behind her. We think this shows that the test we have given is a true one.

It should be noted that part of the large square sail of the Schooner was taken in.

2. The Circuit Court of Appeals for the First Circuit has held that, notwithstanding the passage of the Act of Congress of February 13, 1895 (Chapter 105), in this cause the damages to cargo might be recouped against the vessel carrying the same. It is contrary to the doctrine as laid down and followed in the Second Circuit as stated in "The Viola," 59 Fed. Rep. 632 and 60 Fed. Rep 296. This involves the construction of the so-called Harter Act, to which a different construction is given in the Courts of another Circuit.

If the doctrine of the Court which decided the case at bar is the correct doctrine, then the effect of the Statute is done away with and the vessel carrying the cargo would be held liable for the *fault or negligence* of those engaged in her navigation.

This is a different construction than is given by a United States Court in another Circuit on the same Statute.

We call to the attention of the Court that a writ of certiorari has already issued from this Court to the United States Circuit Court of Appeals for the Second Circuit where the construction of this same statute is raised, and they are now pending in this Court.

The United States Circuit Court of Appeals for the First Circuit has also stated in the case at bar that it is not prepared to admit that the provisions of this Statute were intended to apply to a foreign vessel. A different construction has been given by other United States Courts in the following cases: —

The "Etona," 64 Fed. Rep. 880 (S.D.N.Y.).
The "Florence," 65 Fed. Rep. 248 (S.D.N.Y.).
The "Silvia," 68 Fed. Rep. 230 (2 Cir. App.).
The "Carib Prince," 68 Fed. Rep. 254 (2 Cir. App.).

The statutes limiting liability have been held by this Court to apply to foreign vessels as well as to vessels of this country.

The constructions of these two statutes must in this particular be the same.

3. That the speed of the Schooner "Golden Rule," even if excessive, was not material in the case at bar.

The course of the Schooner was north by east, one-half east; that of the Steamship southwest, one-half west. *When, therefore, the Schooner's horn was heard on the starboard bow of the Steamship, she had passed the point of intersection of the two courses, and if the Steamship had held her course no collision would have taken place.*

The real cause of the collision was the porting of the helm on the part of the Steamship before she knew the position of the Schooner.

A glance at the diagram marked "Exhibit A" at once shows this to be true.

THE SPEED OF THE SCHOONER "GOLDEN RULE," THEREFORE, DID NOT CONTRIBUTE TO THE COLLISION.

Even if the Court should find that the Schooner "Golden Rule" was in fault in proceeding at the rate of speed which she was sailing, still this speed did not contribute to or cause the collision.

The direct cause of the collision, as heretofore shown, was the fact that the Steamship "Chattahoochee" ported her helm and swung to starboard. At the time this was done, the "Chattahoochee" was going at full speed. If she had either held her course or put her helm to starboard, no collision would have taken place.

We desire to call the attention of the Court to the language used by Judge Lacombe in a similar case.

The "Martello," 39 Fed. Rep. 509.

"*Nor did the 'Willey's' speed prevent the 'Martello' from avoiding the collision, because, had the latter been going at a lower rate of speed, had she stopped her engines when she heard the 'Willey's' horn, and reversed (as she did) when she sighted the barkentine, she would have stopped short of the 'Willey's' track, whether the barkentine was going fast or slow.*"

And even if the speed of the Schooner was immoderate, this was not a fault which contributed to the collision.

It was the duty of the Schooner to hold her course, and not in any way to mislead the Steamer. If the Steamer had done what the law required her to do, no collision would have taken place, as she would, if she had been going at a moderate rate of speed, or had stopped and reversed, or had not put her helm to port, but merely held her course, have gone clear of the Schooner.

Her faults are clear, and the fault of the Schooner, if she was at fault, is one which did not cause the collision.

If the Steamship had held her course, no collision would have taken place, and this is acknowledged by her master.

Savage, Record, p. 93.

In the case at bar, gross faults of the Steamship are clearly shown, the only fault that is found against the Schooner being that she was proceeding at more than a proper rate of speed in a fog, under all the circumstances. It would seem that the rule that has been laid down by the Courts in a number of cases, that where one vessel is found grossly in fault, the acts of the other will not be so particularly scrutinized, has a direct application to this case.

The "City of New York," 147 U. S. 72.

In that case, the change of course of a sailing vessel in a fog was held not to be such a fault as to cause a division of damages where the steamship was grossly in fault in going at an excessive rate of speed in a fog.

The language used in the "Comet," 9 Blachf. 323, has, in this case, great force: —

"The case is one for the application of the rule that a vessel which is primarily at fault for a collision cannot shift its consequences in part upon the other vessel, without clear proof of the contributing negligence or fault of the latter. Her own negligence sufficiently accounts for the disaster." (Cited with approval by the Circuit Court of Appeals for the Second Circuit, in the case of

The "John King," 49 Fed. Rep. 469.)

A sailing vessel, in order to manœuvre, must have a speed sufficient to enable her to change her course and keep clear of vessels to whom she owes a duty.

ON THIS QUESTION WE SUBMIT THAT IN NONE OF THE CASES HAS A SAILING VESSEL BEEN HELD TO BLAME IN A COLLISION WITH A STEAMSHIP FOR GOING AT A RATE OF SPEED, IN A FOG IN MID-OCEAN, NO GREATER THAN THE SPEED OF THE "GOLDEN RULE" AT THIS TIME.

4. That even if the Court found the Schooner at fault for excessive speed in a fog, and the Court found

excessive speed was a fault on her part, and that the fault contributed to the collision, we submit that the damages should not be divided equally between the two vessels.

There is an intimation of the Supreme Court in the "Max Morris," 137 U. S. 1, to this effect, where the Court says:—

"Whether in a case like this (mutual fault), the decree should be for exactly half damages sustained, or might, in the discretion of the Court, be for a greater or less proportion of such damages, is a question not presented for our determination upon this record, and we express no opinion upon it."

In the case of the "Victory," found in 68 Fed. Rep. 395, the Circuit Court of Appeals for the Fourth Circuit (Mr. Chief-Justice Fuller presiding) apportions the damages on a different basis, this being a case of mutual fault, as will be shown on pages 399 and 400 of the opinion. In that case one vessel is made to pay much more than the other, on the ground that the faults of the "Victory" were the chief cause of the disaster, and the course that she pursued was almost wilful. This has a direct bearing on the case at bar, where the Steamship proceeded at full speed in a dense fog, contrary to the provisions of the statute, and where her master wilfully infringed what he knew to be the rule of the road at sea in a fog.

WHEREFORE, your petitioners pray that a writ of *certiorari* may be granted by this Honorable Court to the Circuit Court of Appeals for the First Circuit.

EUGENE P. CARVER,
EDWARD E. BLODGETT,
Proctors for Petitioners.

ABRAM W. HENDRY,
JOHN MILLARD,
By ADDISON C. BURNHAM,
their Attorney.

COMMONWEALTH OF MASSACHUSETTS.

SUFFOLK, ss. CITY OF BOSTON.

I hereby certify that on the fifth day of October, 1896, before the subscriber, a Notary Public for the Commonwealth of Massachusetts, in and for Suffolk County, personally appeared ADDISON C. BURNHAM, for and in behalf of ABRAM W. HENDRY and JOHN MILLARD, and made oath that the matters and facts contained in the foregoing petition are true as therein set forth, to the best of his knowledge, information and belief.

WITNESS my hand and Notarial Seal the day and year above written.

[SEAL] STEPHEN R. JONES,
Notary Public.

I, EUGENE P. CARVER, duly admitted to practice in the Supreme Court of the United States, hereby certify that I have examined the foregoing Petition for a writ of *certiorari*, and in my judgment, from the matters stated therein, the writ ought to issue.

EUGENE P. CARVER.

JAN 24 1898
JAMES H. MCKENNEY
CLERK

Brief of Carver & Blodgett for Appellants.

Filed Jan. 24, 1898.

Supreme Court of the United States.

OCTOBER TERM, 1897.

No. 246.

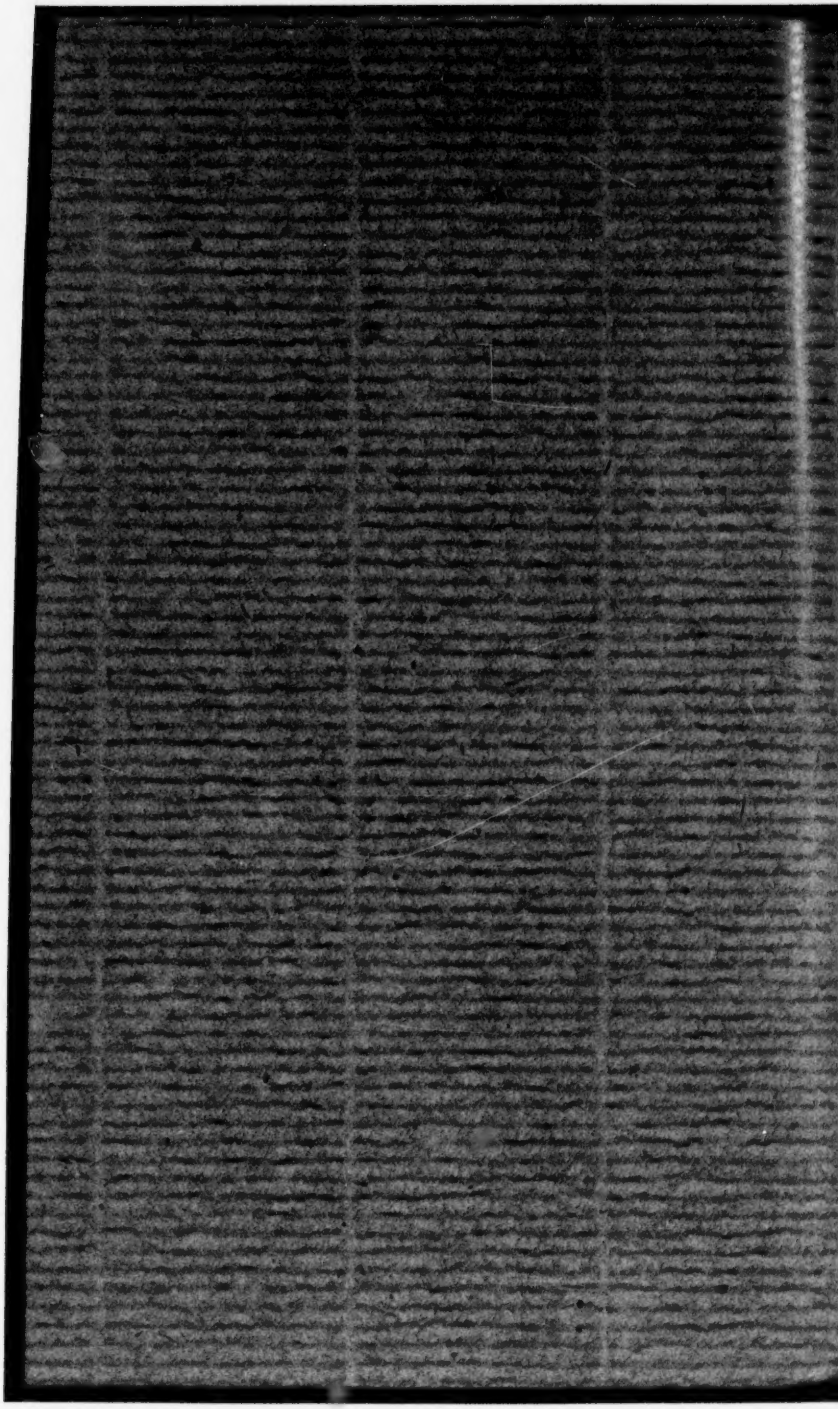
THE "CHATTAHOOCHEE."
ABRAM W. HENDRY et al.,
Libellants, Appellants,

v.

THE OCEAN STEAMSHIP COMPANY,
Claimant, Appellee.

BRIEF FOR APPELLANTS.

EUGENE P. CARVER,
EDWARD E. BLODGETT,
Of Counsel.



Supreme Court of the United States.

No. 246.

THE "CHATTAHOOCHEE."

ABRAM W. HENDRY AND OTHERS,
Libellants, Appellants,

v.

THE OCEAN STEAMSHIP COMPANY,
Claimants, Appellees.

BRIEF FOR APPELLANTS.

This action relates to a collision which took place between the Steamship "Chattahoochee" and the topsail Schooner "Golden Rule." The suit was a libel *in rem* brought by the owners of the "Golden Rule" and the owners of her cargo, in the United States District Court for the District of Massachusetts, the libel being filed on July 31st, 1894. The District Court found both vessels at fault in proceeding at more than a moderate rate of speed in a fog, and caused the damages to be divided. An appeal was accordingly taken to the Circuit Court of Appeals for the First Circuit by the owners of the Schooner, and after hearing, that Court affirmed the decree of the District Court. Application was then made to this Court for a writ of *certiorari*, which writ was granted during the October term, 1896.

STATEMENT OF THE CASE.

The collision took place on July 20th, 1894, at about 4.10 A. M., the place of the collision being in the open ocean, in lat. 40° 36″ North, and long. 59° 40″ West, the nearest land being the Island of Nantucket, about 65 miles distant. The weather at the time was a light fog, and the wind was blowing a moderate breeze from the Southwest.

The Schooner "Golden Rule" was a single-deck topsail schooner of about 200 tons net register, 99 feet keel, 29 feet wide, and 11.2 feet deep.

She was on a voyage from Ponce, a port in the Island of Porto Rico, West Indies, to Boston, and was deeply loaded with a full cargo of sugar and molasses.

At the time of the collision she was sailing on the port tack, with the wind abaft the beam, heading North by East, one-half East, by compass.

Page, Record, p. 16, Ints. 56 and 57.

The master of the Schooner was on deck in charge, a competent seaman was stationed at the wheel, another forward on the lookout, and the mate was sounding a mechanical foghorn forward.

Page (captain), Record, p. 15.
Mullins (mate), Record, pp. 35 and 36.
Wilson, Record, p. 53.
Williams, Record, p. 62.
Broden, Record, p. 67.
Coleman, Record, p. 68.

The evidence is clear that a mechanical foghorn as required by law was sounded in the manner prescribed by the statutes, and this fog signal was heard on board of the Steamship "Chattahoochee" before the collision took place. In fact it was upon hearing this signal that the master of the Steamship gave the order which, without question, was the direct cause of the collision.

She had all her sails set, except one half of her large

lower square sail on her foremast, which sail was taken in that morning at about 2 A. M.

Her speed is in dispute.

The "Chattahoochee" is an iron screw steamship of 1887 tons net register, 300 feet long, and drew at this time 16.6 feet aft and 14 feet forward.

Savage, Record, p. 69, Ints. 20–22.

She was on a voyage from Boston to Savannah, Georgia, having left Boston, July 19th, at about 3.30 P. M. When off Cape Cod, her master, owing to the weather being foggy, decided to go outside, where he could run faster, rather than on the regular course through Vineyard Sound, as the outside course is much clearer of vessels.

Savage, p. 69, Int. 24.

On the morning of the collision, September 20th, at 2 A. M., the steamship was put on a course of southwest half west, *and although the weather had been thick since* 12.30 *A.M.*, and her whistle had been blown during that time, she was still kept at her full speed of about eleven or twelve knots.

The master and the first officer, with the quartermaster, were in the pilot house, about fifty feet from the bow, and a man was on the lookout forward.

Savage, Record, p. 74, Int. 114.

At the time of the collision it was just daylight, although both vessels had their side lights set.

Some time before the collision those on the Schooner heard the Steamship's whistle off their starboard bow; it was duly reported by the lookout to the officer of the deck.

Mullins, the mate, says he first heard it from two to two and one-half points off the starboard bow.

Mullins, Record, p. 35, Int. 61.

The master, when he was able to locate the sound, placed it at four points on his starboard bow.

Page, Record, p. 16, Int. 63.

Wilson, two and one-half to three points.

Wilson, Record, p. 56, Int. 63.

Abbott, the cook, who heard it later, puts it about six points.

Abbott, Record, p. 47, Int. 26.

The sound continued to be heard by those on the Schooner on the starboard bow, and when the Steamship came in sight she was on the starboard side of the Schooner.

The lookout and master of the Steamship say they heard the fog signal of the Schooner. The captain testifying that he heard the signal about two minutes before the collision, all on the Steamship say that they first heard the fog signal of the Schooner on their port bow.

Savage, Record, pp. 70 and 71, Ints. 45 and 48.

The captain of the Steamship says that he thinks he heard the fog signal of the Schooner twice before the collision.

Savage, Record, p. 72, Int. 71.

When the captain of the Steamship first heard the fog signal of the Schooner, he thinks it was almost ahead, but a little on the port bow.

Savage, Record, p. 72, Ints. 73–74.

The second time he heard it, it was abeam (Int. 74).

As soon as he heard the fog signal he gave the order to hard aport, and then gave the order to stop his engine, but did not give the order to reverse full speed.

Savage, Record, p. 76, Ints. 148–150.

When he first saw the sails of the Schooner they bore one and one-half points on his port bow, and during all this time the helm of his vessel was hard aport.

Just before the collision he gave the order full speed ahead.

Savage, Record, p. 76, Int. 152.

On cross-examination he acknowledges that if he had held his course his vessel would have gone clear.

Savage, Record, p. 79.

At the time of the collision the Steamship was heading north-northwest.

Jones (helmsman), p. 95, Int. 36.

The angle of the collision, according to the witnesses' testimony, was about four points, or forty-five degrees. This would confirm the course of the Schooner as north by east, half east, and that of the Steamship as north-northwest, which is exactly three and one-half points, it being agreed by all in this case that the Schooner held her course.

The Steamship, under a hard aport helm, swung from southwest one-half west to north-northwest, a change of nine and one-half points.

The Schooner was struck forward of the fore rigging, cutting her bow off and causing her to sink at once. But for the porting of the Steamship she would have gone clear of the Schooner and under her stern.

The quartermaster thinks that, from the time he heard the fog signal of the Schooner to the time of the collision, it was from three to four minutes.

Jones, Record, p. 97, Int. 60.

The engineer of the Steamship testified that she was going between eleven and twelve knots at the time of the collision.

Henry, Record, p. 100, Int. 45.

The assignment of errors filed by the owners of the Schooner "Golden Rule" are six (6) in number, and raise the questions discussed before that Court and in this brief.

Record, pp. 9 and 10.

ARGUMENT.

The opening sentence in the opinion of the District Court is, — "There can be no question as to the responsibility of the "Chattahoochee" for this collision. She was going at the rate of eleven miles an hour, her highest speed, in a fog of considerable density."

(Opinion of the District Court, p. 10.)

The Steamship therefore stands charged with this fault as no appeal has been taken by her owners or representatives.

We shall discuss this case under the following divisions viz. : —

I. *The faults of the "Chattahoochee" other than those found by the Court.*

II. *That the Schooner "Golden Rule" was without a fault contributing to the collision.*

III. *That if there was any fault on the part of the Schooner "Golden Rule," it was slight in comparison with the faults of the Steamship "Chattahoochee," and if sufficient to cause a division, the damages should be apportioned between the two vessels according to the degrees of fault.*

IV. *The application of the Act of Congress of February* 13, 1893, *known as the Harter Act, to the case.*

I.

The faults of the "Chattahoochee" other than those found by the Court.

The faults of the Steamship alleged in the libel, five in number, are as follows: —

1. Proceeding at an immoderate rate of speed in a fog.
2. Not stopping and reversing as required by law.
3. Not having a proper lookout.
4. Changing her course to starboard instead of to port.
5. Trying to cross the bow of the Schooner.

The learned Judge of the District Court, whose opinion is in the Record on pages 10 and 11, says: "There can be no question as to the responsibility of the 'Chattahoochee' for this collision," on the ground that she was going at the rate of eleven miles in a fog of considerable density, and that even in mid-ocean such a speed is immoderate for a Steamship. It will be noted that no appeal has been taken from the decree finding the Steamship to blame in this particular.

We think that the evidence discloses other faults on the part of the Steamship which we shall herewith discuss.

It is true that the other faults of the Steamship may not be material in the case, except as they bear in one form or another upon the alleged fault of the Schooner, and on the question of damages, but we claim that in these particulars there is a direct application.

The other faults are: —

(a) *Changing her course under a port helm without knowing the location of the sailing vessel whose fog signal she heard.*

There is no question but what the change in the course of the Steamship, by putting her helm to port instead of to starboard, was the direct cause of the collision.

Under this change of helm, the Steamship approached rather than kept away from the Schooner.

In the case of the "Aleppo, "5 Benedict, 554, which was a case of collision not far from Boston, between a Steamship and a Bark, Judge Blatchford, afterwards of this Court says that it was a fault on the part of the Steamship to port her helm, as it caused her to go towards the Bark rather than from her, and that this was one of the causes of the collision. That she should not have attempted to change her course by porting her helm until she knew the exact position of the sailing vessel. In that case the Court says that the order should have been to starboard her helm instead of to put it to port.

This case has a direct bearing on the one before the Court; but for this change of course no collision would have taken place.

See also the "City of New York," 147 U. S. 72.

(b) *Another cause of the collision was the fact that the Steamship did not stop and did not reverse in time.*

When the sound of the fog horn was first heard on the port bow of the Steamship the engines should at once have been put full speed astern, and her helm should not have been changed.

See "The Luckenbach," 50 Fed. Rep. 129.
The "Midland," 48 Fed. Rep. 331.
The "Utopia," 1 Fed. Rep. 892.

A Steamship has been held in fault where she stopped and did not reverse.

The "Lancashire," Prob. Div. (1892),
Court of Appeal.

If in the case at bar the Steamship had stopped and reversed, no collision would have taken place, notwithstanding the high speed at which she was going.

The master at once followed the order to stop given to the engineer with full speed ahead.

Henry Record, p. 101 Ints. 68 and 69.

II.

That the Schooner "Golden Rule" was without fault.

This question, which is the main issue in the case and the only issue of fact raised by this appeal, can well be considered under four sub-divisions: —

(a) *The speed of the Schooner "Golden Rule"?*

(b) *What is a moderate rate of speed for a sailing vessel in a fog in the place where the collision took place?*

(c) *Was the Schooner "Golden Rule" proceeding at a moderate rate of speed under all the circumstances?*

(d) *Did the speed of the Schooner "Golden Rule" in any way contribute to the collision?*

(a) *The speed of the Schooner "Golden Rule"?*

The learned Judge of the District Court, in his opinion, gives the rate of speed as not less than seven or eight knots per hour.

This is clearly an error, as an examination of the evidence will disclose.

The persons who could best judge of the speed of the Schooner, and we submit that their testimony in all respects is clear, are her master and mate.

The master says from five (5) to six (6) knots.

Page, Record, p. 17, Int. 74.

Not quite six (6) knots.

Mullins, Record, p. 40, Ints. 147 and 148.

Between five (5) and six (6) knots.

Abbott, Record, pp. 52 and 53, Cross-Int. 139.

It is true that Williams, who had been *on deck the watch before* on cross-examination places the speed of the Schooner "Golden Rule" at between seven (7) and eight (8) knots; *but it should be remembered that when his deposition was taken he was employed on board of the Steamship "Chattahoochee."*

Williams, Record, p. 63, Int. 61.

He was at the wheel of the Schooner from twelve until two, and his idea of her speed would be governed by her speed at that time, when he had a good chance to observe it, and no doubt did, and which was greater than at the time of the collision.

Williams, Record, p. 61, Ints. 11–13.

Let us look at the facts which are not in dispute, to see what the speed was.

The Schooner was loaded deep with a heavy cargo.

It was not over a foot from the deck to the water.

Page, Record, p. 18, Int. 94.

The wind was heavier at twelve than at four.

Page, Record, p. 15, Int. 36.

Again the master says (Page, Record, p. 15, Int. 37):—

"Int. 37. And how did the wind continue from twelve to two? A. From twelve to two it increased a little; at two o'clock there was a fresh breeze,—I judged the vessel was going eight knots,—and at half-past two it commenced to moderate, and it moderated some after the fog shut down, and at daybreak it moderated still more, as it generally does at daybreak and sunset. The wind generally moderates at daybreak and sunset."

He took in the square sail between twelve and two.

Page, Record, p. 22, Cross-Ints. 161 and 162.

When asked by the learned Counsel for the Steamship, on cross-examination, he says:—

Page, Record, p. 22.

"X-Q. 163. Why did you take it in? A. I didn't want to go too fast.

"X-Q. 164. On account of the fog? A. No, it was not foggy then.

"X-Q. 165. You thought even without the fog you were going too fast with what sails you had set then, did you? A. No; I didn't want to get up on the coast until daylight.

"X-Q. 166. You were going so fast, with all your sails set, that you were afraid you would reach the land before daylight, — is that true? A. No; I took it in in case it became hazy; in case it became foggy.

"X-Q. 167. That sail is half a sail, isn't it? A. Yes, sir.

"X-Q. 168. Where did it come on the foremast, — what sails are below it? A. There are no sails below it.

"X-Q. 169. It is the lowest sail on the foremast, is it? A. Yes, sir.

"X-Q. 170. And that you say was taken in about two o'clock? A. About two o'clock."

The mate says there was not as much wind at four o'clock as there was at twelve.

Mullins, Record, p. 43, Int. 210.

That when he came on deck before the collision the Schooner was standing up perfectly straight.

Mullins, Record, p. 43, Int. 216.

Abbott says the wind was light at the time of the collision.

Abbott, Record, p. 53, Cross-Int. 140.

The mate says that the log shows she averaged about seven knots per hour from twelve to four.

Mullins, Record, p. 40, Cross-Int. 151.

The fog came in about 3.05 A. M.

Page, Record, p. 15, Int. 35.

Again her master says, Record, p. 17:—

"Q. 74. How fast do you think you were going at the time of the collision? A. Well, I couldn't judge correctly; between five and six knots. It was smooth. The vessel was standing straight up. *I had looked over her side sometime before that in regard to her speed, to see whether it was prudent to shorten sail, and I didn't. I considered it was just nice working speed. I could wear ship or tack ship or anything, and my yards were braced for that occasion in case I met another vessel, and she had the right of way.*"

If we take these facts, knowing that the ship ran twenty-eight miles from twelve to four,

Page, Record, p. 17, Int. 78,

and if we take the speed from twelve to two, when the square sail was on forward and the wind was stronger, as eight knots per hour, we would have twelve knots left to be run between two and four.

At 2.30 A. M. it commenced to moderate. If the speed for that half-hour was taken at the same rate, we would have eight knots to be run in the next hour and a half, with the wind moderating all the time, which, as we all know, always occurs when the fog comes in. Yet the average rate on that basis is only five and one-third knots per hour, therefore, the estimate of Captain Page of between five (5) and six (6) knots must have been a very frank one, and the rate must have been much nearer five (5) than six (6), if at all over five knots.

She was deeply loaded, had some of her sails taken in, and the wind was moderate. Surely her speed could not have been over five (5) knots per hour.

(b) *What is a moderate rate of speed for a sailing vessel in a fog in the place where the collision took place?*

We call the attention of the Court to the fact that there is not as yet a reported case where a sailing vessel has been held in fault for going at more than a moderate rate of speed in a fog in mid-ocean. All reported cases have

been those where they were either in narrow channels or in crowded waters.

In the case of the "John Hopkins," 13 Fed. Rep. 185, where a collision took place in a dense fog off Chatham, between a sailing vessel going at the rate of nine knots per hour, and a steamship going at the rate of about four knots per hour, the speed of the sailing vessel was held to be excessive in such a frequented place.

In the case of "The Rhode Island," 17 Fed. Rep. 554, Judge Brown held that eight knots was an excessive rate of speed for a sailing vessel in Long Island Sound near Eaton's Neck. A speed of about five (5) knots was held not to be excessive in the English Channel near Lizard Light off the port of Falmouth, where the collision was with a steamer.

In this case the steamship, which was a tugboat, was going between seven (7) and eight (8) knots, and was held alone in fault. She did not hear a fog signal from the sailing vessel.

The "N. Strong," L. R. (1892), P. Div. 103.

In the case of the "Elysia," 4 Asp. 540, the English House of Lords held that five (5) knots per hour was a moderate rate of speed in a fog for a sailing vessel with all sails set off the Banks of Newfoundland, where the steamship was held to blame for going at the rate of eight (8) knots per hour. In that case the steamship's witnesses estimated the speed of the sailing vessel at nine (9) knots.

The Court in that case states that the sailing vessel should be well under command, and that the speed in a narrow channel is not to be taken as a test for a sailing vessel.

In the case of the "Nacoochee," 137 U. S. 331, where the collision was off Cape May, the schooner, with all sail set, was going four (4) knots per hour, and the steamship between six (6) and seven (7) knots. The Steamship was held alone to blame. In that case all sail was set on board of the schooner.

In the case of "The Morning Light," 2 Wall. 550, the

Supreme Court of the United States held that a speed of from five (5) to six (6) knots per hour in a fog at night was not a fault for a sailing vessel at the entrance to Vineyard Sound.

In this connection the language on page 406 of Marsden on Collisions is important: "*It is submitted that the decisions as to what is a 'moderate' speed for small sailing ships bear heavily upon such vessels, and that they should not be carried any further.*"

In the case at bar the fog was not dense. Those on the Schooner saw the Steamship quite a distance off, which shows that in this case it was not a thick fog.

In England the Court has used the following language (Brown, L. J., in "The Beta," L. R. 9, P. Div. 134), in speaking of sailing vessels, viz: —

"*The term 'moderate' is a relative term: it depends on place, on the kind of ship, and on the kind of fog.*"

The case of the "Zadok" (L. R. 9, P. Div. 114), was the case of a collision in the English channel, where there were a great many vessels.

Here the Court holds that the "Zadok" was in fault under all of the circumstances.

Here there was no fault on the part of the steamer. The Court used the following language, p. 117: —

"Of course, in the case of a sailing vessel, we know that she must have way on to fill her sails, otherwise she will not have the power of controlling her movements."

Again, Sir James Hannon, says: —

"Some margin must be allowed for the particular circumstances of the case, and it is not to be said that exactly the same rule would apply to a sailing vessel out in mid-ocean; but when one has to deal with a case like this, of a vessel which is passing across a course in which it is to be expected that numerous vessels may be, it is her duty to reduce her speed, as I have said, to as low a rate as is consistent with her keeping a good steerage way."

In the case of the "N. Strong" (*supra*), the Court says: —

"*I agree that whether the position of the vessel is in the open sea, or in a river like the Thames, or off a difficult coast, is a matter which has to be taken into consideration.*"

We submit that the speed of the Schooner "Golden Rule" was moderate.

In the case of the "The Colorado" 91 U. S. 692, the sailing vessel was going between five (5) and six (6) knots.

In the "Martello," 153 U. S. 64 on p. 70, this Court says in regard to the speed of a steamship.

"While it is possible that a speed of six miles an hour *even in a dense fog*, may not be excessive upon the open ocean and off the frequented paths of commerce, a different rule applies to a steamer just emerging from the harbor of the largest port on the Atlantic coast, and in a neighborhood where she is likely to meet vessels approaching the harbor from at least a dozen points of the compass."

(c.) *Was the Schooner "Golden Rule" proceeding at more than a moderate rate of speed under all of the circumstances?*

The position of the Schooner "Golden Rule" was in mid-ocean; she was out of the usual track of ocean steamships.

Page, Record, p. 18, Int. 87.

The master of the "Chattahoochee" says he went outside to be out of the usual track of vessels.

Savage, Record, p. 69, Int. 23.

The master of the Schooner who knew that it was his duty to keep clear of all vessels that he should meet, except steam vessels, was bound to keep such speed on as to be able so to do.

It seems that he had been considering this when he took in part of his square sail.

In speaking of it he says, Page, Record, 17: —

"Q. 74. How fast do you think you were going at the time of the collision? A. Well, I couldn't judge correctly, — between five and six knots. It was smooth. The vessel was standing straight up. I had looked over her side sometime before that in regard to her speed, to see whether it was prudent to shorten sail, and I didn't; I considered it was just nice working speed, — I could wear ship or tack ship or anything, and my yards were braced for that occasion, in case I met another vessel and she had the right of way."

He thus shows that he had his vessel in such shape as to avoid those which the law required him to avoid.

According to the testimony of her captain, the Schooner "Golden Rule" was sailing only at the rate of speed that, considering the density of the fog, she could easily avoid any vessel whom she might meet, and which it was her duty under the law to keep clear of. This is the test of moderate speed that has been laid down by the different Courts of this country when applied to steamships.

Ships under sail cannot, of course, stop and reverse as can those under steam, but they must sail at such a rate in a fog that they can manœuvre sufficiently to avoid vessels having as to them the right of way.

Article 13 of the sailing rules applies not merely to a fog but also to a falling snow, and would be interpreted by the Court to apply to any kind of thick weather.

What then would be the duty of a sailing vessel in a snow-storm?

The fog was not dense; the Steamship was seen by those on board of the Schooner quite a distance.

Mullins the mate of the Schooner says four or five lengths of the steamship.

Mullins, Record, p. 36, Ints. 73 and 74.

Capt. Page says he should judge she was 2,000 feet away when he first saw her.

Page, Record, p. 17, Int. 65, and says, Int. 66.

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

"Not very thick. It was a low fog; not one of those black dense fogs."

Abbott says five or six of her lengths.

Abbott, Record, p. 48, Int. 46.

Wilson says five or six lengths of the steamship.

Wilson, Record, p. 56, Int. 64.

On the Steamship Capt. Savage does not claim that it was a thick fog.

Savage, Record, p. 70.

In this connection the language of this Court in a recent case is important, viz.:

"*But in cases of this kind much depends upon the density of the fog, and something must be left to the judgment and discretion of the master. Precautions which might be indespensable in a fog so thick that vessels are invisible at a distance of three hundred feet, might become unnecessary and even burdensome if they may be seen a distance of one thousand feet.*"

The Umbria 166 U. S. 404–417.

The speed of the Schooner "Golden Rule" therefore did not contribute to the collision.

Even if the Court should find that the Schooner "Golden Rule" was in fault in proceeding at the rate of speed which she was sailing, still this speed did not contribute to or cause the collision.

The direct cause of the collision as heretofore shown was the fact that the Steamship "Chattahoochee" ported her helm and swung to starboard. At the time this was done, the "Chattahoochee" was going at full speed. If she had either held her course or put her helm to starboard, no collision would have taken place.

This is shown by a glance at the Exhibit annexed to this brief.

We desire to call the attention of the Court to the language used by Judge Lacombe in a similar case.

The "Martello," 39 Fed. Rep. 509.

"*Nor did the 'Willey's' speed prevent the 'Martello' from avoiding the collision, because, had the latter been going at a lower rate of speed, had she stopped her engines when she heard the 'Willey's' horn, and reversed (as she did) when she sighted the barkentine, she would have stopped short of the 'Willey's' track, whether the barkentine was going fast or slow.*"

That even if the speed of the Schooner was immoderate, this was not a fault which contributed to the collision.

It was the duty of the Schooner to hold her course, and not in any way to mislead the Steamship. If the Steamship had done what the law required her to do, if she had been going at a moderate rate of speed, or had stopped and reversed, or had not put her helm to port, or merely held her course, she would have gone clear of the Schooner and there would not have been a collision.

Her faults are clear, and the fault of the Schooner, at best, is one which did not cause the collision.

If the Steamship had held her course, no collision would have taken place, and this is acknowledged by her master.

Savage, Record, p. 79.

In the case at bar, gross faults of the Steamship are clearly shown, the only fault that is found against the Schooner being that she was proceeding at more than a proper rate of speed in a fog, under all the circumstances. It would seem that the rule that has been laid down by this Court in a number of cases, that where one vessel being found grossly in fault, the acts of the other will not be so particularly scrutinized, has a direct application to this case.

The "City of New York," 147 U. S. 72.

In that case, on page 85, this Court says :—

"In view of the recklessness with which the steamer was navigated that evening, it is no more than just that the evidence of contributory negligence on the part of the sailing vessel should be clear and convincing. Where fault on the part of one vessel is established by uncontradicted testimony, and such fault is, of itself, sufficient to account for the disaster, it is not enough for such vessel to raise a doubt with regard to the management of the other vessel. There is some presumption, at least, adverse to its claim, and any reasonable doubt with regard to the propriety of the conduct of such other vessel should be resolved in its favor."

This same doctrine was affirmed in the "Ludvig Holberg," 157 U. S. 60–71.

In the case of the "Umbria," 166 U. S. 404, which was a case of collision between the steamships in a fog near New York harbor, where the "Umbria" was going at a high rate of speed and the other at the rate of four (4) knots, the "Umbria" was held alone in fault, although the other vessel made a change of course.

This Court says, page 409 : —

"Indeed, so gross was the fault of the 'Umbria' in this connection, that we should unhesitatingly apply the rule laid down in the 'City of New York,' 147 U. S. 72, 85, and the 'Ludvig Holberg,' 157 U. S. 60, 71, that any doubts regarding the management of the other vessel, or the contribution of her faults, if any, to the collision, should be resolved in her favor."

In that case the change of course of a sailing vessel in a fog was held not to be such a fault as to cause a division of damages where the steamship was grossly in fault in going at an excessive rate of speed in a fog.

The language used in the "Comet," 9 Blachf. 323, has, in this case, great force : —

"The case is one for the application of the rule that a vessel which is primarily at fault for a collision cannot shift

its consequences in part upon the other vessel, without clear proof of the contributing negligence or fault of the latter. Her own negligence sufficiently accounts for the disaster." Cited with approval by the Circuit Court of Appeals for the Second Circuit, in the case of

The "John King," 49 Fed. Rep. 469.

"*A sailing vessel, in order to manœuvre, must have a speed sufficient to enable her to change her course and keep clear of vessels to whom she owes a duty.*"

On this question we submit that in none of the cases has a sailing vessel been held to blame in a collision with a steamship for going at a rate of speed in a fog in mid-ocean no greater than the speed of the "Golden Rule" at this time.

This Court, in a recent case, has again stated this rule in another form, which has special application to the case at bar: —

"As between these vessels, the fault of the "Victory" being obvious and inexcusable, the evidence to establish fault on the part of the "Plymothian" must be clear and convincing, in order to make a case for apportionment. The burden of proof is upon each vessel to establish fault on the part of the other."

The "Victory," 18 U. S. Supreme Ct. R. 149–155.

THE "GOLDEN RULE" HAD A PROPER LOOKOUT.

The Schooner "Golden Rule" had the right of way as far as the "Chattahoochee" was concerned, and as long as she performed her duty of holding her course and sounding her fog signal at regular intervals, that is all that could be asked of her.

The "Golden Rule" had a proper lookout stationed on the forecastle-head. Wilson went there at 4 A. M., at which time he relieved Williams, whom he found there.

Wilson, Record, p. 54.

Williams was there before that.

Williams, Record, p. 62, Ints. 14 to 22.

At the rate that the Steamship was going she would make a mile in five (5) minutes, so at the time that Wilson relieved Williams the vessels were over two (2) miles distant; from that time until the collision, the mate and Wilson were both on the forecastle-head of the Schooner, one attending to the horn and the other looking out.

Mullins, p. 36.

Wilson, pp. 54 and 55.

Capt. Page came on deck at 3.50 A. M., and was on deck from that time until the collision took place.

Page, Record, p. 15, Ints. 38 to 40.

THE FOG SIGNAL WAS A PROPER ONE, AND WAS SOUNDED AS REQUIRED BY LAW.

The horn that was used was a mechanical foghorn, and it was on the forecastle-head.

Page, Record, p. 16, Int. 51.

Mullins, Record, p. 34, Ints. 34 and 35.

Wilson, Record, p. 54, Int. 33.

The foghorn gave a good sound.

Page, Record, p. 16, Int. 53.

Wilson, Record, p. 54, Int. 34.

The foghorn was blown after 3.05 A. M. The number of blasts blown each time was three (3) blasts, and they followed the Steamship's whistles after they were heard.

Page, Record, p. 15, Int. 36; p. 16, Ints. 48–54.

Mullins, Record, p. 35, Ints. 53 and 54; p. 36, Ints. 63 to 66.

Abbott, Record, p. 47, Int. 29.

Wilson, Record, p. 54, Int. 32.

That the foghorn was a good sounding one is shown by the fact that the master of the Steamship spoke of it as a whistle.

Savage, Record, p. 77.

Before the blast of the horn died away, Captain Savage ordered his helm hard aport.

Savage, Record, p. 71, Int. 52.

He says he heard the horn twice before he saw the Schooner.

Savage, Record, p. 72, Int. 71.

"If I had heard his three whistles, I should have been obliged to do the same thing."

Savage, Record, p. 79.

No fault in this particular is found by either of the other Courts.

We submit that the Schooner "Golden Rule" was without fault.

III.

That if there was any fault on the part of the Schooner "Golden Rule," it was slight in comparison with the faults of the Steamship "Chattahoochee," and if sufficient to cause a division, the damages should be apportioned between the two vessels according to the degrees of fault.

The question of the division of damages when both vessels are at fault is discussed quite fully in a number of recent articles.

"Law Quarterly Review," vol. 12, p. 260 (July, 1896). By Louis Franck (of Antwerp).

"Law Quarterly Review," vol. 13, p. 17 (January, 1897).

"Law Quarterly Review, vol. 13, p. 241 (July, 1897). The two latter by Leslie F. Scott.

A paper entitled "Both to Blame" was read by F. W. Raikes at the conference of the Association for the Reform and Codification of the Law of Nations.

When both vessels are to blame four different rules are now applied, viz. : —

(1.) To allow no recovery.

This is the rule of the Netherlands (except when one vessel is at anchor, when the damage is divided), Germany (until January 1, 1900), Italy, Spain and some of the South American Republics.

(2.) To divide the loss in proportion to the value of the vessels in collision.

This rule is now confined to Turkey and Egypt. It seems to have been derived from the rule of "The Consoluto del Mare," in case of accidental damage.

(3.) To divide the loss between the two vessels according to the degree of fault.

This is the rule of France, Belgium, Norway, Sweden, and Denmark, and will be the rule in force in Germany when the new code is in full force (January 1, 1900).

(4.) To charge each vessel with one-half of the damage without regard to the degree of fault.

This is now the rule in England, in both the Admiralty and Common Law Courts.

The Rule of equal division of the damage where both vessels are to blame.

This rule has been firmly established in England since the decision of the House of Lords, in Hay *v.* Le Nerve, in 1824.

Marsden on Collisions (3d ed.), p. 154.

It has been applied to the cargo as well as to the ship, so that a cargo owner can only recover one-half damages of either vessel, provided both vessels are to blame.

The Milan, Lush. p. 388.

Lord Denman said of the English rule: "It is an arbitrary provision of the law of nations, not dictated by natural justice, nor, possibly, quite consistent with it."

De Vaux *v.* Salvador, 4 Ad. & El. 420.

Lord Selborne, L. C., in 1882, said, in the case of The Kehedive, 7 Ap. Cases, pp. 795–799: "That liability depends upon a rule of the Admiralty jurisdiction, which to myself has always seemed arbitrary."

The Rule in the United States.

The rule in the United States on the common law side of the Court is that there is no recovery.

The United States Courts sitting in Admiralty have always divided the loss between both vessels in cases of mutual fault. The division has usually been by an equal apportionment between the vessels at fault. The Admiralty law and the jurisdiction of the Court is created by the Constitution of the United States.

Constitution, Art. 3, Section 2.

In the case of the Lottawanna, 21 Wall. 558, this Court says: —

"The question as to the true limits of maritime law and Admiralty jurisdiction is . . . exclusively a judicial question."

In that case the Court says: —

"The general system of maritime law which was familiar to the lawyers and statesmen of the country when the Constitution was adopted, was most certainly intended and referred to when it was declared in that instrument that the judicial power of the United States shall extend 'to all cases of admiralty and maritime jurisdiction.'"

We are unable to find that when the Constitution was adopted there was any rule or custom in this country in regard to a division of loss in a case of collision when the fault lay with both vessels.

As we have before shown it was not until after the formation of the Constitution that the English Courts adopted their present rule.

The first case in this Court on the subject is that of the "Catharine," 17 Howard, 170, where this Court divided the loss between the two vessels, using the following language: —

"Under the circumstances usually attending these disasters, *we think the rule dividing the loss the most just and equitable.*"

Nothing is said how the division should be made, although from the language which precedes it it would seem the intention to adopt the English rule of division.

The case of "The Atlas," 93 U. S. 302, shows however that this Court did not intend to adopt the English rule, as it there held that the full amount of cargo damage was due from both vessels in case of mutual fault.

This Court has applied the rule of division of damages to other marine torts besides collision.

The "Max Morris," 137 U. S. 1, 13–14.

That this Court did not then consider the question to be settled would be inferred from the following language, viz.: —

"Whether, in a case like this, the decree should be for exactly one-half of the damages sustained, or might, in the discretion of the Court, be for a greater or less proportion of such damages is a question not presented for our determination upon this record, and we express no opinion upon it."

The "Max Morris," 137 U. S. 15.

The case was decided while the statute of 1872, making findings of fact of the Circuit Court final in Admiralty cases was in force.

The rule of apportioning the damages according to the

degree of fault was applied in this country to a case of collision in 1884.

The "Ida May," 20 Fed. Rep. 741.

The same rule was adopted by the Circuit Court of Appeals for the fourth circuit (1895).

The "Victory," 68 Fed. Rep. 395.

The language of Mr. Justice Story, in the case of the "Palmyra," 1 Wheat. 1–17, in this connection, is important.

"*In the Admiralty, the award of damages always rests in the discretion of the Court, under all circumstances.*"

In theory at least a division of damages in case of mutual fault in proportion to the degree of fault is one which is founded on principles of equity and mutual justice. The objections that have been made are wholly as to the practical operation of rule. We have, however, the examples of the maritime nations of continental Europe, and the fact that the rule has been adopted in Germany, as the law of that Empire after January 1, 1900.

Mr. Franck, in his article previously cited, claims that it is derived from the rule of the ancient maritime law.

It would seem however that both rules of division of damage are the creation of the present century.

The rule to be adopted is the one which is the most equitable.

The objections, which have been made to the practical working of the rule of proportional liability, are fully covered by the article of Mr. Scott to which we respectfully refer.

"Law Quarterly Review," Vol. 13 page 241.

The question of what rule is to govern in the United States has not been decided by this Court.

It is for this Court to determine which one will best work out substantial justice between all of the parties.

There is a strong feeling in England in favor of adopting the proportional rule, but the Courts there agree that their

present rule has been so firmly established by the Court of last resort that it can only be done by statutory enactment.

Germany, as has before been noted, has in its new code, already enacted and soon to go in force, adopted the proportional rule.

The whole question is open before this Court to determine. It can adopt the rule of division proportional to the degree of fault, as it has not committed itself to the English rule, but has repudiated it in some particulars.

If the Court should find that the Schooner "Golden Rule" was guilty of any fault contributing to the collision we contend that her owners should not be required to bear one-half of this burden.

IV.

The rule of damages in case of collision where there is mutual fault under the "Harter Act."

If the Court should find that the Schooner "Golden Rule" was at fault so that there should be a division of damages whether proportional or equal; we are then called upon to consider whether or not the Act of Congress of February 13, 1893, known as the Harter Act, has modified the previous rule of law in the matter of damages.

In the case of the "Delaware," 161 U. S. 459, this Court decided, that section 3 of this Act did not exempt the vessel in fault from liability to the other vessel, or to her cargo.

The Circuit Court of Appeals in its opinion intimates that this Act was not intended to apply to foreign vessels.

The whole history of the legislation leading to the passage of the Act shows that it was intended to apply to the steamship lines running between the United States and Europe all of which except one are foreign. This is shown by the history of the Act as disclosed in the record as found in the congressional debates.

24 Cong. Record 147, 148, 171, 172, 1180, 1291.

It has been applied to a foreign vessel in a number of cases.

The "Silvia," 64 Fed. Rep. 607; on appeal 68 Fed. Rep. 230.

The "Carib Prince," 63 Fed. Rep. 254; on appeal 68 Fed. Rep. 254.

The statutes limiting the liability of shipowners have been held to apply to foreign vessels even when for their benefit.

The "Scotland," 105 U. S. 24.

The language of section 3 of the Harter Act is:—

"That if the owner of any vessel transporting merchandise or property to or from any port in the United States of America shall exercise due diligence to make the said vessel in all respects seaworthy and properly manned, equipped and supplied, neither the vessel, her owner or owners, agent, or charterers shall become or be held responsible for damage or loss resulting from faults or errors in navigation or in the management of said vessel."

The words used are "*any vessel*" which clearly makes the act apply to foreign as well as domestic vessels coming within its provision.

It is clear, therefore, that the Schooner "Golden Rule" and her owners would not be liable to the owners of her cargo for any negligent navigation and no recovery could be had against them in that particular.

It may have been, therefore, the intention of the act to apply the English rule as contained in bills of lading.

If the Schooner "Golden Rule" or her owners would not have been liable to the owners of her cargo, then this liability cannot be set off against the liability of the Steamship "Chattahoochee."

This is the construction of the act in this particular as applied by Judge Addison Brown in "The Viola," 60 Fed. Rep. 296, 298.

In which the Court says:

"That the carrying vessel cannot be charged for any part of the loss suffered by her own cargo directly or indirectly, nor can any offset against her claim to damages be made by the other vessel on account of what the latter vessel must pay for that cargo damage; but that the same offset which would have been formerly allowed against the carrying vessel, or against the moneys payable to her, should now be deducted from the claim of her cargo."

The rule laid down by this Court in the case of "The North Star" 106 U. S. 17, cited by the Circuit Court of Appeals does not in any way conflict with this rule.

The case of "The North Star" (*supra*) was a case of the application of the act *limiting liability*, the liability still exists but the amount thereof is limited, whereas in the case of the Harter Act there is no liability from the owners of the Schooner "Golden Rule" to her cargo, so that the rule of limited liability does not apply.

We submit that the Schooner "Golden Rule" was without fault and her owners are entitled to full damages.

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No. 627. Sup. Ct.
Brief of Russell for Appellee
Supreme Court of the United States.
OCTOBER, 1896.
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STEAMSHIP "CHATTAHOOCHEE."

ABRAM W. HENDRY ET AL.,
Appellants, Petitioners,

vs. 627.

THE OCEAN STEAMSHIP COMPANY,
Respondents.

ANSWER OF THE OCEAN STEAMSHIP COMPANY TO THE PETITION OF ABRAM W. HENDRY ET AL. FOR A WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

CHAS. THEO. RUSSELL,
Of Counsel.

BOSTON:
NATHAN SAWYER & SON, PRINTERS,
No. 70 STATE STREET.
1896.

Supreme Court of the United States.

THE "CHATTAHOOCHEE."

ABRAM W. HENDRY ET AL.

vs.

THE OCEAN STEAMSHIP COMPANY.

ANSWER OF THE OCEAN STEAMSHIP COMPANY, CLAIMANT AND LIBELLEE, TO THE PETITION OF THE LIBELLANTS FOR A WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

THE petition arises from a libel in admiralty in the United States District Court for Massachusetts by petitioners as owners of the schooner "Golden Rule" against the steamship "Chattahoochee" for collision between the two vessels and the consequent sinking and total loss of the schooner and cargo of sugar and molasses in the fog some eighteen miles southeast of Nantucket South Shoal Lightship about four o'clock in the morning of July 20, 1894. The pleadings raise the usual issues in a fog collision, — each vessel charging the other with immoderate speed, want of lookout, and improper navigation.

The case was heard in the District Court upon full proofs in oral evidence or depositions, all material witnesses being examined. The Court after due consideration decided that each vessel was in fault, — the steamship for going at an immoderate rate of speed in the fog, and the schooner for the

same fault. The other alleged faults were not passed upon, as it was unnecessary to consider them. The steamship was ordered to pay in full for the loss of the cargo on the schooner, and was then allowed to recoup and deduct one-half of such amount so paid from one-half of the value of the schooner and freight lost, and to pay to the owners of the schooner the balance remaining. (Final Decree, Record, pp. 9–11.) The steamship was uninjured, and, upon the finding of mutual fault, was held, as above, under the rules of damage recognized in such cases in the equity of our admiralty practice. The opinion of the judge of the District Court (NELSON, J.) is published in the Record (pp. 137–139). The final decree is in the Record (pp. 9–11).

These petitioners, representing the schooner, appealed in due form to the Circuit Court of Appeals for the First Circuit. No appeal was taken in behalf of the steamship. The record was then made up and printed, containing all the evidence produced at the trial in the District Court. No additional evidence was taken upon either side. The libellants simply exercised their legal right of presenting their evidence and arguments to the appellate court. The case was there argued orally and upon elaborate briefs upon each side. Every question of fact or law was presented and argued. There is no pretence that the Circuit Court of Appeals did not fully hear, consider, and appreciate all the issues involved. In a lengthy and learned opinion by PUTNAM, J., for the Court, these issues of fact and law, so far as they were deemed pertinent, were thoroughly discussed and decided, and the decree of the District Court affirmed. The opinion is reported as an authoritative and unanimous opinion of the Court.

The *Chattahoochee*, 74 Fed. Rep. 899.

But the libellants now desire by this form of proceeding to appeal to the United States Supreme Court and again argue

the same record, at least, the issues of law discussed and led in the courts below, within their exclusive statutory diction. The only ground for the unusual claim is that courts erred in the decision.

I.

he respondents object that the case is not a proper one for grant of the exceptional writ of *certiorari* merely for the pose of further appeal and argument of the cause. It was manifest intention of the Act of March 3, 1891, to relieve Supreme Court from the necessity of hearing admiralty eals, by confining the appellate jurisdiction in admiralty ses to the Circuit Court of Appeals. If *certiorari* be granted equest of an aggrieved party, then the appellate jurisdiction he Supreme Court still continues, and the only change made the statute is in the method of invoking it. We understand t this Court regards the assumption of such jurisdiction as ceptional and discretionary, and imposes upon the petitioner burden of showing a case within the exception. Mr. Justice AY, in *American Construction Co.* vs. *Jacksonville Railway*, 3 U.S. 372, 383, expressed the opinion of the Court: "The hority conferred on this Court by the very provision on ich the petitioners mainly rely, by which it is enacted that, any such case, as is hereinbefore made final in the Circuit urt of Appeals, it shall be competent for the Supreme Court require, by *certiorari* or otherwise, any such case to be rtified to the Supreme Court for its review and determination th the same power and authority in the case as if it had been rried by appeal or writ of error to the Supreme Court,' has en held to be a branch of its jurisdiction which should be

exercised sparingly and with great caution, and only in cases of peculiar gravity and general importance or in order to secure uniformity of decision. . . . Accordingly, while there have been many applications to this Court for writs of *certiorari* to the Circuit Court of Appeals under this provision, two only have been granted, the one in *Lau Ow Bew's Case*, 141 U.S. 583, which involved a grave question of public international law affecting the relations between the United States and a foreign country; the other in *Fabre, Petitioner*, No. 1237 of the present term, an admiralty case which presented an important question as to the rules of navigation, and in which the decree of the Circuit Court of Appeals for the Second Circuit reversed a decree of the district judge, and was dissented from by one of the three circuit judges; and in each of those cases the Circuit Court of Appeals had declined to certify the question to this Court."

And see

In re Wood, 143 U.S. 202.

II.

The first grievance of the petitioners is the finding of law and fact (both necessarily involved) of both the Courts below that the schooner "Golden Rule" was not at the time going at a moderate speed in the admitted fog.

This decision involved mainly a consideration of the facts and circumstances, and involved no novel or peculiar interpretation of the rules of navigation of sufficient consequence to call for the exceptional interposition of this Court by the extraordinary

writ of *certiorari*. The question was, What was, under the circumstances, the proper application of the Rule of Navigation, Article 13 (Act of March 3, 1885)? The rule is explicit in requiring a sailing-vessel in fog to go at a moderate speed.

This Court has decided that a speed of six knots an hour for a steamship is immoderate. "Under such circumstances, and in such a fog that vessels could not be seen more than a quarter of a mile away, it is not unreasonable to require that she reduce her speed to the lowest point consistent with a good steerage way, which the Court finds in this case to be three miles an hour." — (Mr. Justice BROWN.)

> The *Martello*, 153 U.S. 64, 70.
> *Nacoochee*, 137 *Id.* 330.
> *Colorado*, 91 *Id.* 692.

The authorities are agreed — and so far as is known to these respondents without question or dissent — that the same rule of fog speed applies to sailing-vessels that this Court has applied to vessels under steam. The character of the motive power is immaterial in judging of compliance with the statute requirement of "moderate speed."

Spencer, in his recent work upon "Collisions," Sect. 50, sums up the law: —

"Ordinary prudence and good seamanship alike require a sailing-vessel navigating in foggy weather to go at a moderate rate of speed, and to use all possible precautions against collisions by making some sort of detonating signal, whereby other ships may be apprised of its presence and situation; and this, irrespective of any rule on the subject, especially in a thoroughfare where other vessels may be expected to pass. A high rate of speed in a dense fog is less justifiable in a sailing-ship than in one propelled by steam, as she has less facilities for quickly stopping and changing her movements. The rule of moderate

speed is enforced with the same or a greater degree of strictness in the case of sailing-vessels than in the case of steamships. They must reduce their speed when occasion demands, or abide the consequences of a failure to do so. Circumstances so unusual as to justify a sailing-vessel from taking the ordinary precautions to guard against collision by reducing speed, using a fog horn, or complying with other statutory requirements, would exonerate a steamer for violating the same rules under like circumstances."

The reason for the requirement is stated by Judge BROWN in the N.Y. District Court.

The *Rhode Island*, 17 Fed. Rep. 554, 559.

"And if the navigation of a sailing-vessel, as regards speed, is such that it must be held careless or reckless in reference to her duty to other sailing-vessels which she is likely to meet, it must be held careless and faulty in reference to steamers also, though the latter are bound to keep out of the way; for there cannot be two diverse rules as to prudence in navigation, applicable to the same vessel in the same situation; nor, as I have said above, was the rule requiring steamers to keep out of the way designed to encourage careless or reckless navigation in sailing-vessels, or to sanction a rate of speed as against steamers, which, as against sailing-vessels, must be condemned. To permit this would be to permit sailing-vessels to take advantage of the obligation imposed on steamers to go at moderate speed, and to keep out of the way, and increase the difficulties of steamers in doing so. To allow sailing-vessels to increase their own speed as that of steamers is diminished would tend directly to thwart the very object of the rule requiring moderate speed, — viz., to secure sufficient time to avoid collision, — and it would thus convert a rule designed to insure greater safety into an occasion of greater danger. The duty of steamers to keep out of the way is a correlative one, and presupposes that the

sailing-vessel shall observe not only all the specific statutory rules, but all other general obligations of prudence and caution in navigation which the special circumstances demand. Among the latter must certainly be embraced a moderate rate of speed at night and in a fog, in a thoroughfare where numerous steamers and other vessels must be expected to be met; and a speed which is held immoderate for a steamer under such circumstances cannot be held moderate or permissible for a schooner."

And see, —

The *Johns Hopkins*, 13 Fed. Rep. 185.
Vesper, 9 *Id.* 569.
Wyanoke, 40 *Id.* 702.
Louisiana, 2 Benedict, 371.
Chancellor, 4 *Id.* 153.

The English authorities (and the "Golden Rule" was a British schooner subject to their jurisdiction) are equally clear.

"The object of the rule is this: That when a fog comes on it is the duty of the ship, whether she be a sailing-vessel or a steamer, to moderate her speed as much as she can, yet leaving herself with the capacity of being properly steered." — (Sir J. HANNEN.)

The *Zadok*, 9 P. D. 114, 117.
Beta, *Id.* 134.
Dordogne, 10 *Id.* 6.
N. Strong (1892), Probate, 105.

Unless this Court thinks doubtful the interpretation of the Rule of Navigation regarding speed in fog, made alike by the tribunals in this country and in England, there is no exceptional question regarding speed raised in the Record in this case.

The question is one frequently before the Courts, and is

mainly one of fact: What is moderate speed at the place and time and under the circumstances? So far as the question in this case was one of fact, the finding of the Court below is final. That Court found upon the facts: "The schooner was under all sail except the lower half of her square sail. Her rig gave her a very large spread of canvas which made her fast on the course she was sailing. She was practically free, and her master admits that she was making between five and six knots. Other witnesses claim more. However this may have been, it is very plain that she was making substantially all the speed she was capable of, and that she could easily have shortened sail materially when she struck the fog, and yet have kept her steerage way, and all the way necessary for all manœuvres which could reasonably have been anticipated." — (PUTNAM, J.)

The *Chattahoochee*, 74 Fed. Rep. 901–902.

Again, later in the opinion, Judge PUTNAM says: "The current of the decisions fails to justify the 'Golden Rule' in proceeding with practically all sail set after she entered the fog, and even after she heard the fog horn." — (*Id.*, p. 903.)

It is submitted that it is difficult, if not impossible, for this Court to review a decision upon moderate speed without examining and passing upon the facts regarding the circumstances. The Courts carefully refuse to establish an arbitrary rate of speed in the fog. It must be determined in each case upon the facts. Even before the Act of 1891 creating the Circuit Court of Appeals, this Court had no jurisdiction in admiralty appeals over questions of fact.

To illustrate the difficulty, attention is called to some facts claimed to be proved by the evidence.

1. The place of collision was not the open ocean, but the confined passage known as the "outside passage," between Nantucket and the Banks. It is the only route in addition to

the "inside passage" through Vineyard Sound for vessels between Boston and ports south of Cape Cod. The place was eighteen miles south of the Nantucket South Shoal Lightship. The fact that this steamship, on the regular line from Boston to Savannah, was using this passage, and was then only twelve hours from Boston shows that the place of collision was frequented water. There is no claim that she was out of her course.

2. While the Court refers to the admission of the master of the schooner that he was going five or six knots, his evidence shows an admission by him of seven knots. *Int.* "What were you reckoning your speed to be when you looked at your chart?" *Ans.* "About seven knots." (See cross-examination of Capt. Page of the schooner, Record, Ints. 201–206, p. 29.) His lookout, Williams, says the schooner was going seven and a half or eight knots. (Williams, Ints. 113–114, Record, p. 77.)

3. The evidence is undisputed that the schooner, getting into the fog about three o'clock, made no attempt to lessen sail or lower speed. She continued under substantially full sail.

It is submitted that unless this Court will examine the evidence and settle the facts regarding the navigation of the schooner, it cannot review or decide the question of moderate speed. Such question is not an abstract question of law or one that for the purpose of precedent can be decided apart from the contentions as to the facts. The learned counsel for petitioners apparently recognize this necessity by the discussion and reference to evidence upon pages 3–7 of the printed Petition submitted by them. The alleged question of law cannot be separated from the questions of fact, and over the latter this Court will not take jurisdiction.

III.

The second reason alleged for the grant of the writ of *certiorari* is the decision of the Circuit Court of Appeals that, in settling the amount to be paid to the owners of the schooner, the steamship could recoup and deduct one-half of the amount paid by the latter for loss of schooner's cargo. The final decree (Record, pp. 9–11) gave cargo $17,215.17. The value of schooner, freight, etc., was $18,410.90. By recouping one-half the value of cargo ($8,607.58) from one-half the value of schooner and freight ($9,205.45), the balance decreed as due from the steamship to the libellants as owners of the schooner is $597.87.

1. The petitioners claim that the Act of Congress (chap. 105, Act of February 13, 1893), commonly known as the Harter Act, has changed the rule of equal division of damages in collision causes, where there is mutual fault, and that, under it, the Court should hold that this steamship should pay in full for the loss of cargo, and, in addition, one-half the value of the schooner, without recoupment. In other words, although both vessels were in equal fault, and guilty of the same fault, the steamship should bear three-fourths of the damage, and the schooner only one-fourth.

The Circuit Court of Appeals refused to give the requested construction and application to the Harter Act, but held that as between two vessels, both tort feasors, the rule of division of the damages affirmed in

The *North Star*, 106 U.S. 17,

still applied.

It is submitted that the Harter Act does not change the equity of equal division of loss between two offending vessels. That Act relates simply to the contractual relations between a cargo and its carrier. It has no application to an outside third party. The Act, in effect, substitutes a statutory for a contract bill of lading. It does not affect the tort liability for damage done by another vessel. This steamship gains no benefit from any contract or statute exemption existing between the schooner and her cargo. Nor does the schooner acquire any added right as against the steamship by reason of such exemption. The joint damage done by the mutual fault is adjusted (so far as the steamship is concerned) as between the two vessels, not as between the schooner and her cargo. The relation of that cargo to the schooner no more concerns the steamship than does the question whether the cargo or schooner was protected by insurance, by English Exempting Bill of Lading, or by the Limited Liability Act of 1851. The question before the Court was not, what did the steamship owe the cargo, but what in equity did she owe the schooner?

The opinion of the Court expressly recognizes and follows the recent opinion of this Court in

The *Delaware*, 161 U.S. 459,

where this Court held that the Harter Act merely affects the relative rights existing between a vessel and her cargo, and "the statute does not affect the liability of a vessel to other vessels with which she may come in collision."

Mr. Justice BROWN said: "The act was an outgrowth of attempts made in recent years to limit, as far as possible, the liability of the vessel and her owners, by inserting in bills of lading stipulations against losses arising from unseaworthiness, bad stowage, and negligence in navigation, and other forms of liability which had been held by the Courts of England, if not of this country, to be valid as contracts, and to be respected

even when they exempted the ship from the consequences of her own negligence. . . . These provisions (of the statute) have no possible application to the relations of one vessel to another, and are mainly a re-enactment of certain well-known provisions of the common law applicable to the duties and liabilities of vessels to their cargoes. The fact, too, that by Section 6 the various sections of the Revised Statutes which embody the Limited Liability Act are preserved unimpaired would seem to indicate that the later act was not intended to receive the broad construction claimed."

2. The petitioners claim that the decision regarding the Harter Act differs from other decisions in some of the inferior federal courts. It is true that Judge PUTNAM in the opinion says that "we are not prepared to determine that its benefits were intended to extend to foreign vessels." This is mere *dicta in arguendo*, as the decision was based upon the case of the *Delaware*, *supra*, and did not require a decision upon the application of the Act to a foreign vessel. Assuming that the Act did apply to such a vessel, it still did not affect the relative rights of two vessels in mutual fault for collision in the adjustment as between them of the collision loss. The cases cited upon the eighth page of the Petition are not contrary to the decision in this case. They are all cases in which the question of liability under the Act was wholly between the carrying vessel and her cargo. The question of the rights of a foreign ship under the Act is immaterial to the case as considered and decided by the Circuit Court of Appeals.

The *Etona*, 64 Fed. Rep. 880.
Florence, 65 *Id.* 248.
Silvia, 68 *Id.* 230.
Carib Prince, *Id.* 254.

IV.

The remaining complaint of the petitioners is the refusal of the Circuit Court of Appeals to hold that the speed of the schooner, even if immoderate, was not material and did not contribute to the collision.

We submit two answers to this proposition: —

1. The proposition involves purely questions of FACT and examination of evidence outside the jurisdiction of this Court. The decision must necessarily involve a consideration of the relative approach of the two vessels; of the distance apart when discovered; of the subsequent manœuvring or failure to manœuvre of each, — all questions upon which much evidence was taken, and elaborate argument made in the lower Court. This Court is called upon to examine the record of this evidence, weigh the probabilities, and draw the proper inferences, merely to decide whether the two inferior Courts erred in their consideration of the evidence submitted upon these issues of fact.

2. It would be almost, if not quite, impossible to find that the speed of an approaching vessel does not contribute to a resulting collision. Certainly if such vessel had been going at a slower rate she would not at the time have reached the point of collision.

The following points were made and argued in behalf of the steamship, and are urged here if the Court consents to examine the questions of fact.

(*a*) The immoderate speed of the schooner prevented the steamship from swinging clear under the port wheel.

(*b*) It caused the schooner to overtake the steamship, notwithstanding the latter's swing to starboard, and to get under the bows.

(*c*) It prevented the steamship from hearing and locating the fog horn earlier and more frequently.

WHEREFORE the Ocean Steamship Company prays this Honorable Court to *dismiss* the Petition for a writ of *certiorari* with costs.

OCEAN STEAMSHIP COMPANY,

BY ITS PROCTOR,

CHARLES THEODORE RUSSELL.

No. 246. 97.

FILED
JAN 11 1898
JAMES H. McKENNEY

Brief of Russell for Appellee

Supreme Court of the United States.

Filed Jan. 11, 1898.

OCTOBER TERM, 1897.

No. 246.

STEAMSHIP "CHATTAHOOCHEE."

ABRAM W. HENDRY ET AL., *Appellants*,

vs.

THE OCEAN STEAMSHIP COMPANY, *Claimant*.

BRIEF FOR CLAIMANT OF STEAMSHIP.

CHAS. THEO. RUSSELL,
ARTHUR H. RUSSELL,
Of Counsel.

BOSTON:
NATHAN SAWYER & SON, PRINTERS,
No. 70 STATE STREET,
1898.

Supreme Court of the United States.

No. 246.

STEAMSHIP "CHATTAHOOCHEE."

ABRAM W. HENDRY ET AL., *Appellants, Libellants,*

vs.

THE OCEAN STEAMSHIP COMPANY,

CLAIMANT OF STEAMSHIP "CHATTAHOOCHEE, *Appellee.*

BRIEF FOR APPELLEE.

THIS is a libel *in rem* in admiralty for collision, brought in the United States District Court for Massachusetts; later appealed to and decided in the Circuit Court of Appeals for the First Circuit; and then brought before this Court upon a writ of *certiorari.*

The libel seeks to recover $34,500 for total loss of the schooner "Golden Rule," freight, cargo of sugar and molasses and personal effects, sunk by collision with the steamship "Chattahoochee," southeast of Nantucket Shoals, about four o'clock in the morning of July 20, 1894.

STATEMENT OF THE CASE.

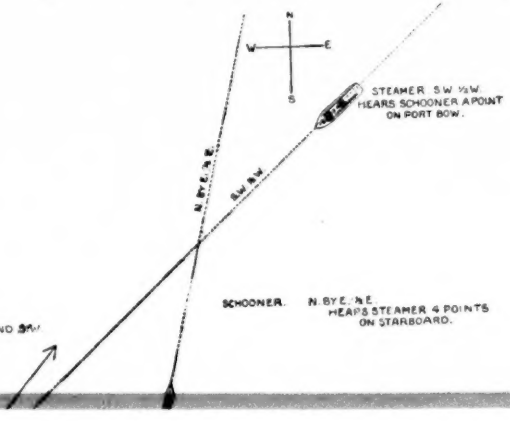
The collision occurred about eighteen miles southeast of Nantucket South Shoal Lightship, about 4.10 A.M. by the schooner's time, — about four o'clock by the steamer's (Standard) time. Day had broken, sunrise being at about 4.40. The weather was foggy, requiring fog signals. The schooner went into the fog about three o'clock, the steamer about 12.30 o'clock.

The wind was southwest.

The schooner was a two-masted topsail schooner of Liverpool, Nova Scotia, of one hundred and ninety-nine tons burden, rigged with twelve sails, including one double square sail on the foremast. Her length over all was one hundred and ten feet. She was on a voyage from Porto Rico to Boston, with a full cargo of molasses and sugar, and at the time of collision was sailing on the port tack with the wind free, on a course north by east one-half east, having the wind five or six points abaft the beam. She was under all sail except one-half of the square sail forward, taken in about two o'clock A.M. Her speed is disputed.

The steamship is an iron ship of eighteen hundred and eighty-seven tons burden, with a length of about three hundred feet, running at the time on the line between Boston and Savannah. She left Boston in the afternoon of the 19th, and when off Cape Cod the master decided to take the outside passage by Nantucket. Before the collision the steamship was eighteen miles off the South Shoal Lightship, on a course southwest one-half west, proceeding at a rate of ten or eleven miles an hour, blowing her whistle at the required intervals after 12.30 o'clock. The master and the first officer with the quartermaster were in the pilot house, and a lookout was stationed forward.

The two vessels were therefore approaching on converging lines, at an angle of three points, as shown in this diagram: —



The schooner heard the steamship's whistle off the starboard bow: Mullins, the mate, says two or two and one-half points off starboard bow (Mullins, Int. 61, Record, p. 35); the master, when he located it, puts it four points (Page, Int. 63, p. 16); Williams says four points (Williams, Int. 37, p. 62); Wilson two and one-half or three points (Wilson, Int. 63, p. 56); Abbott, the cook, puts it six points on starboard beam (Abbott, Ints. 26–27, p. 47). It is safe to say that the steamer was then well to starboard.

The schooner's witnesses substantially agree upon the distance from the steamer when the latter was seen. Mullins says he saw steamer four or five lengths, equal to four hundred or five hundred yards (Mullins, Dep., Ints. 73–74, p. 36). Captain Page puts the distance two thousand feet (Page, Int. 65, p. 65). As they both testify that the steamer was heard fifteen or twenty minutes before the collision, and several blasts of the whistle were heard, it is probable that the steamship, with her black hull well out of water, was seen at a greater distance than they think. The schooner kept her course and speed until the collision.

The steamer, at five minutes before four, heard a single blast of a fog horn about a point off the port bow. The order was immediately given and obeyed to stop and reverse, and the wheel was put hard-a-port, in order to locate the sound. Headway was rapidly reduced to four or five miles an hour, when the sails of the schooner were seen on the port. The steamship was then swinging to starboard under her port helm, and the order was given full speed ahead, for the purpose of clearing the schooner. The schooner kept her course, and the vessels came together, the steamer striking the schooner forward of the foremast on the starboard side.

The schooner almost immediately sank with her cargo and property on board, and became a total loss. The steamship was uninjured.

The schooner alleges fault in the steamship in

(1) *proceeding at an immoderate rate of speed in a fog;*
(2) *not stopping and reversing, as required by law;*
(3) *not having a proper lookout;*
(4) *changing to starboard instead of to port;*
(5) *trying to cross the bow of the schooner.*

The steamship alleges fault in the schooner in

(1) *proceeding at an immoderate rate of speed in a fog;*
(2) *not keeping a proper lookout;*
(3) *not blowing the fog horn, as required by law;*
(4) *not changing to port by starboarding the wheel, after seeing the steamship swinging under the port wheel.*

At the trial in the District Court upon the evidence as reported in the Record, the Court decided that both vessels were in fault, — the steamship for proceeding in the fog at the rate of eleven miles an hour, and the schooner for proceeding at a speed of seven or eight knots; the speed of both vessels being found by the Court to have been immoderate. The Court thereupon decreed that the steamship, which was uninjured, should pay one-half the value of the schooner and freight lost, and the full value of the cargo, with the usual right to recoup.

Opinion, Record, pp. 10, 11.

After the interlocutory decree the parties agreed that the value of cargo and personal effects of passenger on the schooner was $15,736.05; that the value of schooner, freight, and effects of master and crew was $16,829 (Agreement regarding damages, Record, p. 8).

The Court thereupon entered a final decree against the steamship for the full agreed value of the cargo lost, with interest, and for one-half the value of the schooner, freight, and effects

lost, with interest, deducting from such one-half by way of recoupment one-half the value decreed for loss of cargo, leaving the balance due owners of schooner $591.87.

Final Decree, Record, pp. 7–9.

From this decree for divided damage, upon the finding of mutual fault, the claimant of the steamship has not appealed. The decree stands as against her. The libellants, as owners of the schooner, appealed to the Circuit Court of Appeals, and alleged as error in the opinion and decrees of the District Court, the findings in substance as follows: —

(1) That the collision was caused by the fault of both vessels, instead of alone by the fault of the steamship.

(2) That the schooner was going at a rate of seven to eight knots per hour, instead of not even four knots.

(3) That the schooner was going at more than a moderate rate of speed in a fog.

(4) That the schooner was in fault, instead of finding that she was wholly without fault, and entitled to recover full damages.

(5) That the steamship was entitled to recoup one-half of the damages suffered by the cargo of the schooner from the damages found for the owners of the schooner, instead of ruling that, under the Act of Congress, February 13, 1893 (Harter Act), no such right to recoup existed.

(6) The refusal of the Court to decree for the libellants for full damages, and to find the steamship alone at fault.

Assignment of Errors, Record, pp. 9–10.

The Circuit Court of Appeals affirmed in every particular of present consequence the decree of the District Court, and the appellants were granted the writ of *certiorari* to bring the record and the issues therein raised before this Court.

The two inferior courts agreed in substance in all findings of fact; and so far as the questions involved are issues of fact, the principle, quite recently reaffirmed, is applicable: "Their concurrent decisions upon a question of fact are to be followed unless clearly shown to be erroneous."

Compania de Navigacion *vs.* Brauer, 18 Sup. Ct., Reporter 12.
The *Conqueror*, 166 U.S. 110, 136.
Richmond, 103 *Id.*, 540.

The appellee respectfully calls attention to the issues raised under three principal heads: (1) *The fault of the schooner;* (2) *the right and propriety of equal division of damages, and* (3) *the effect of the Harter Act* (ch. 105, February, 1893) *upon the division of damages.*

I.

The Fault of the Schooner.

The faults of the schooner, upon which appellee relied, were (1) immoderate speed; (2) want of proper lookout; (3) not properly sounding the fog horn, and (4) not starboarding to avoid the collision.

Only the first of these faults was considered by either of the lower courts. Each court found the speed of the schooner to be immoderate, and therefore did not deem it necessary to decide the other issues presented and argued.

The District Court found the speed of the schooner "could not have been less than seven or eight knots an hour."

NELSON, J., Record, p. 11.

The Circuit Court of Appeals finds that the schooner's rig "gave her a very large spread of canvas, which made her fast on the course she was sailing. She was practically free, and her master admits that she was making substantially all the speed she was capable of, and that she could easily have shortened sail materially when she struck the fog and yet have kept her steerage-way and all the way necessary for all manœuvres which could reasonably have been anticipated."

PUTNAM, J., Record, pp. 104, 105.
The *Chattahoochee*, 74 Fed. Rep. 901, 902.

So far, therefore, as the question of moderate speed is a question of fact, depending upon the locality, denseness of the fog, ability to reduce speed, the refusal to do so, and the character and equipment of the vessel, — the decision of the two courts below is adverse to the schooner.

THE SPEED OF THE SCHOONER.

1. The collision occurred some eighteen miles southeast of the Nantucket Shoal Lightship. An examination of the nautical chart will show that this is a passageway between Nantucket and the Banks, and is one of the two travelled routes necessarily taken by every vessel coasting to the north or south of Cape Cod. It is known as the "outside" passage, as distinguished from Vineyard Sound, which is the "inside" passage. These

two passages are probably the most frequented waters on our coast. The fact that this steamship, only twelve hours out from Boston, was in this passage on her regular course shows that it is the regular outside passage for Boston and northern commerce. The schooner was directly in the track of this commerce, and her master knew that he was there, because he had his observation the previous noon and knew he was approaching land.

2. *It is submitted that the schooner in this channel was proceeding at a speed of at least seven knots an hour, or, as Judge Nelson found after seeing and hearing the witnesses, seven or eight knots.*

(*a*) The evidence from her crew is as follows: —

Williams (the lookout from two to four o'clock, and the best judge) says, going seven and one-half or eight knots, all through his watch (Ints. 113–114, p. 66).

Wilson (the lookout at four o'clock) says, going somewhere between six and seven miles (Int. 127, p. 59).

Mullins (the mate, not on deck until just before four o'clock) says, it may have been six knots, more or less (Int. 147, p. 40).

Abbott (the cook, with no opportunity to judge) says, six knots (Ints. 139, 140, pp. 52, 53).

(*b*) The schooner had a log dragging for the four hours just before the collision. It was taken in at four o'clock, and registered twenty-eight miles for the four hours, or an average of seven miles an hour.

Captain Page, Ints. 75–78, p. 17.
Mullins, Dep., Ints. 149–155, p. 40.

(*c*) The schooner was carrying all sail; that is, mainsail, gaff topsail, fore and aft foresail, and square sail, lower and upper

topsail, topgallant sail, stem staysail, and three jibs, except that one-half of this square sail on the foremast had been taken in sometime between twelve and two o'clock (Page, Ints. 159–162, p. 22). Mullins says it was taken in at eight o'clock (Mullins, Ints. 155–157, p. 40). "She was faster with that rig than a schooner of the same build" (Captain Page, Int. 146, p. 21). This half sail was taken in before it became foggy, because the master "didn't want to go too fast. It was not foggy then. I didn't want to get up on the coast until daylight" (Captain Page, Ints. 163–169, p. 22).

The schooner, then, made no change in her sails or speed when the fog shut in. Under her spread of canvas she was going as fast as the wind would take her.

(*d*) Wilson, the schooner's lookout, says the wind was "a good, nice breeze; a good wind, sir" (Wilson, Int. 126, p. 59). "Near about the same at four o'clock as at twelve" (*Id.*, Int. 144, p. 60). Captain Page admits that at two o'clock there was an eight-knot breeze (Page, Int. 37, p. 15).

(*e*) The evidence from the steamer confirms the statement of the schooner's witness, Williams. "The schooner was making a fuss in the water, going between seven and eight knots" (first officer Howlett, Ints. 60–62, p. 83). "By the breeze there, I should think she would be going about seven or eight knots. The breeze was about an eight-knot breeze from the southwest" (second officer Jensen, Ints. 23–24, p. 88). "She was going about seven or eight knots. I think she was going faster than the steamer" (Lookout Wall, Ints. 38–40, pp. 90–91).

(*f*) Captain Page does not agree with his own men, nor with himself upon the question of speed.

Upon his direct examination, he says: "At two o'clock there was a fresh breeze. I judged the vessel was going eight knots; and at 2.30 it commenced to moderate, and it moderated some after the fog shut down, and at daybreak it moderated still

more" (Page, Int. 37, p. 15). Then he says: "I couldn't judge correctly how fast we were going, — between five and six knots. It was smooth. The vessel was standing straight up. I had looked over her side sometime before that in regard to her speed, to see whether it was prudent to shorten sail, and I didn't. I considered it was just nice working speed. I could wear ship or tack ship or anything, and my yards were braced for that occasion in case I met another vessel, and she had the right of way" (Page, Int. 74, p. 17). His estimate is pure guess. "I judged at twelve o'clock she was going at about seven knots, at two o'clock I judged she was going about eight and one-half knots, and between two and three o'clock she was going seven, and so on down as it moderated" (*Id.*, Int. 79, p. 17).

His actions during the watch are better evidence than his interested guesses made on the witness stand.

(1) He looks over the side several times to see whether he is going too fast (Page, Ints. 349–352, p. 32).

(2) Between two and four o'clock he goes below and consults his chart three times at least, "to keep a run of my position, which I always try to do" (Page, Ints. 197–200, p. 24). Unless he was moving very rapidly in these two hours, why the constant reference to the chart? He knew he was rapidly approaching land, and must be on constant lookout for it. Such examination of the large coast chart is consistent only with rapid speed. He last examined it at 3.45 o'clock (Page, Ints. 188–195, p. 23).

But Captain Page finally admits his speed to be seven knots. Asked upon cross-examination: —

"*Q.* What were you reckoning your speed to be when you looked at your chart?

"*A.* About seven knots.

"*Q.* Did you use the lead any that night?

"*A.* I did not.

"*Q.* How could you tell how far you had changed your position from the time when you looked at the chart at one time until you looked at it the next time?

"*A.* Judging by the speed the vessel was going through the water.

"*Q.* How fast did you consider she was going?

"*A.* About seven knots.

"*Q.* So that when you would go below and look at your chart you would give your vessel's position as being seven miles ahead of where she was before that?

"*A.* Yes, sir.

"*Q.* Or, rather, at the rate, I would say, of seven miles an hour?

"*A.* Yes, sir."

Captain Page, Ints. 201–206, p. 24.

And it is significant in this connection that Captain Page thought that at the time of collision he was twenty-five miles southeast of the lightship (Page, Int. 85, p. 18), when, in fact, he was but eighteen miles; and he got an accurate observation on the previous noon (Page, Int. 156, p. 22). Since noon he had made seven miles more than he thought.

(*g*) The schooner must have been going faster than the steamship, because when the fog horn is heard on the latter she is off the port, and the wheel of the steamer is at once put hard a-port; notwithstanding the swing of the steamer to starboard, the schooner is going fast enough to offset the whole starboard swing of the steamer, and to get under the bow.

(*h*) There was no necessity nor excuse for refusal to reduce the speed of the schooner: sail could easily have been taken in. There was no danger of lee shore, or of inability to manœuvre to avoid collision. The wind was fresh and free. There was plenty of sea-room, with a smooth sea and summer weather.

3. *The speed of the schooner at the time and place and under the circumstances was immoderate and contrary to the Articles of Navigation.*

The then existing law was Article 13 of the Act of March 3, 1885: —.

"Art. 13. EVERY ship, *whether a sailing-ship or a steam-ship*, shall, in a fog, mist, or falling snow, go at a moderate speed." The rule leaves no question of the equal obligation upon the sailing-vessel with the steam-vessel to go at a moderate speed.

There is more reason for the requirement in the case of the sailing-vessel, because she cannot, like the steam-vessel, slacken speed, stop, or reverse, when the emergency arises. Her rudder, then, is her only weapon of defence. The steamer controls not only the wheel, but the engine.

That a rate of seven knots, or even six, per hour is not moderate speed for a steamship in a fog is authoritatively settled by the recent decisions of this Court.

A speed of six knots outside New York harbor is excessive. "Under such circumstances, and in such a fog that vessels could not be seen more than a quarter of a mile away, it is not unreasonable to require that she reduce her speed to the lowest point consistent with a good steerage-way, which the Court finds in this case to be three miles an hour." — BROWN, J.

The *Martello*, 153 U.S. 64, 70.

So, a speed of six to seven knots off Cape May is immoderate.

The *Nacoochee*, 137 U.S. 330.
Colorado, 91 *Id.* 692.

"Five to six miles an hour is a questionable speed in a fog everywhere. The event here demonstrates that it was a reprehensible speed in the waters off Cape Henry, and it was gross fault on the part of this steamer. The speed was the cause of this collision." — HUGHES, J., in Circuit Court of Appeals for Fifth Circuit.

The *Michigan*, 63 Fed. Rep. 280, 287.

"The general consensus of opinion in this country is to the effect that a steamer is bound to use only such precautions as will enable her to stop in time to avoid a collision, after the approaching vessel comes in sight, providing such approaching vessel is herself going at a moderate speed required by law." — BROWN, J.

The *Umbria*, 166 U.S. 404, 417.

4. *There is no distinction in the application of the rule between a steamship and a sailing-vessel.* The reason is the same, the ability to recognize it the same, and the circumstances substantially the same.

"The same principles are, of course, applicable to sailing-vessels."

Lowndes, Collision, p. 73.

"Ordinary prudence and good seamanship alike require a sailing-vessel navigating in foggy weather to go at a moderate rate of speed, and to use all possible precautions against col-

lisions by making some sort of detonating signal, whereby other ships may be apprised of its presence and situation; and this, irrespective of any rule on the subject, especially in a thoroughfare where other vessels may be expected to pass. A high rate of speed in a dense fog is less justifiable in a sailing-ship than in one propelled by steam, as she has less facilities for quickly stopping and changing her movements. The rule of moderate speed is enforced with the same or a greater degree of strictness in the case of sailing-vessels than in the case of steamships. They must reduce their speed when occasion demands, or abide the consequences of a failure to do so. Circumstances so unusual as to justify a sailing-vessel from taking the ordinary precautions to guard against collision by reducing speed, using a fog horn, or complying with other statutory requirements, would exonerate a steamer for violating the same rules under like circumstances."

Spencer, Collisions, Sect. 50.

"We hold that a steamer is bound in all places to go at a moderate rate of speed in a fog, and that a sailing-vessel is bound to do so in such a place as this" (off Chatham). — LOWELL, J.

The *Johns Hopkins*, 13 Fed. Rep. 185, 187.

Because "a rate of speed at night, in a dense fog, which is immoderate and excessive for a steamer, is less justifiable in a sailing-vessel under the same circumstances, as she has less facilities for quickly stopping and changing her movements;" and a speed of seven miles an hour in a fog in Long Island Sound is immoderate.

The *Rhode Island*, 17 Fed. Rep. 554.
Louisiana, 2 Ben. 371.
Chancellor, 4 *Id.* 153.

"And if the navigation of a sailing-vessel, as regards speed, is such that it must be held careless or reckless in reference to her duty to other sailing-vessels which she is likely to meet, it must be held careless and faulty in reference to steamers also, though the latter are bound to keep out of the way; for there cannot be two diverse rules as to prudence in navigation, applicable to the same vessel in the same situation; nor, as I have said above, was the rule requiring steamers to keep out of the way designed to encourage careless or reckless navigation in sailing-vessels, or to sanction a rate of speed as against steamers, which, as against sailing-vessels, must be condemned. To permit this would be to permit sailing-vessels to take advantage of the obligation imposed on steamers to go at moderate speed, and to keep out of the way, and increase the difficulties of steamers in doing so. To allow sailing-vessels to increase their own speed as that of steamers is diminished would tend directly to thwart the very object of the rule requiring moderate speed, — viz., to secure sufficient time to avoid collision, — and it would thus convert a rule designed to insure greater safety into an occasion of greater danger. The duty of steamers to keep out of the way is a correlative one, and presupposes that the sailing-vessel shall observe not only all the specific statutory rules, but all other general obligations of prudence and caution in navigation which the special circumstances demand. Among the latter must certainly be embraced a moderate rate of speed at night and in a fog, in a thoroughfare where numerous steamers and other vessels must be expected to be met; and a speed which is held immoderate for a steamer under such circumstances cannot be held moderate or permissable for a schooner." — BROWN, J.

The *Rhode Island*, 17 Fed. Rep. 554, 559.
Vesper, 9 *Id.* 569.

In the *Colorado*, 91 U.S. 692, the sailing-vessel was found to have been going at a moderate speed, especially because "all

her light sails had been taken in, as a matter of precaution, to lessen her speed, and to put the vessel more completely at the command of her helm." — CLIFFORD, J., p. 696.

A speed of six knots in a fog, under nearly full sail, off Cape May, is immoderate.

The *Wyanoke*, 40 Fed. Rep. 702.

The obligation under a similar rule is clearly defined and enforced in the English courts, in the jurisdiction to which this schooner belonged.

"The object of the rule is this: that when a fog comes on, it is the duty of the ship, whether she be a sailing-vessel or a steamer, to moderate her speed as much as she can, yet leaving herself with the capacity of being properly steered." — Sir J. HANNEN.

The *Zadok*, 9 P. D. 114, 117.

"Speed other than what would allow this sailing-vessel to keep her steerage-way was not moderate." — BRETT, M. R.

"In a dense fog in the British Channel it is clear that a vessel must not go faster than will enable her to be kept under command." — BOWEN, L. J.

The *Beta*, 9 P. D. 134.

"If she is under full sail, she ought to take sail off till she brings herself as nearly to a standstill as is possible whilst being under command." — BRETT, M. R.

The *Dordogne*, 10 P. D. 6, 12.

"Putting all these things together, it seems to me, on the whole, that the rate of speed which is to be attributed to the sailing-vessel is something about four knots. Now, if that is so, was that too much? The law on the subject is quite clear. A sailing-ship is entitled to move at such a rate of speed as will enable her to keep properly under command; and I agree with, and accept the decisions which go to the effect that what is properly under command varies, and that, under some circumstances, a vessel may be entitled to go at a higher rate of speed than in others. . . . I do not profess myself to be able to say what rate of speed a sailing-vessel should have in order to keep well under command; but the Trinity Masters have considered the matter, and they tell me that if the speed of the vessel was about four knots, as I have found it to be, they do not think any blame attaches to the vessel for that rate of speed."—JEUNE, J.

The *N. Strong* (1892), Probate Rep., 105, 108.

And see

The *Virgil*, 2 W. Rob. 201.
Victoria, 3 *Id.* 49.
Pepperell, Swabey, 12.

That the immoderate speed of the schooner caused, or with her other faults contributed to, the collision is clear.

(*a*) It prevented the steamship from swinging clear under the port wheel.

(*b*) It caused the schooner to overtake the steamer, notwithstanding the latter's swing to starboard, and to get under the bows.

(*c*) It prevented the steamer from hearing and locating the fog horn earlier and oftener.

(*d*) Both Courts below find as a fact that the schooner's speed contributed to the collision.

Other Faults of the Schooner.

The Courts below having found the schooner guilty of immoderate speed, it was unnecessary for either Court to consider or rule upon the allegations and claim on the part of the steamship, that the schooner was guilty of other faults in her navigation. The points made in those Courts are repeated here because (1) if this Court shall reverse the decisions below on the matter of the schooner's speed, the Court, in justice to the rights of the steamship, will consider the evidence and claim regarding these other faults which it was not necessary to pass upon below; and (2) these faults may bear upon the equity of the equality of the division of damages raised by appellants.

The appellee for the steamship claimed and argued upon these faults: (1) *Want of proper lookout;* (2) *failure to sound the fog horn as required,* and (3) *refusal to starboard in time to avoid the collision.*

1. *Want of proper lookout and vigilance on the part of the schooner.*

The steamship must depend upon the evidence from the men on the schooner, and they differ in their statements.

Williams was the schooner's lookout from two to four o'clock; was on deck after twelve in the master's watch; and, called as a witness by the schooner, was in the best position of all witnesses to know how the schooner was navigated before the collision.

Especial attention, therefore, is called to his cross-examination regarding the navigation of the schooner during his watch.

"*Q.* Now, how many were on deck from two o'clock until four?

"*A.* The man at the wheel and me, sir.

"*Q.* Was the captain on deck?

"*A.* No, sir; not at two o'clock.

"*Q.* Did he come on deck before four?

"*A.* Yes, sir.

"*Q.* Now, when did the captain come on deck?

"*A.* I couldn't say exactly when he came on deck, but he came on deck, sir, after one bell, sir.

"*Q.* That is, after ten minutes to four?

"*A.* Yes, sir.

"*Q.* And did the mate come on deck?

"*A.* Yes, sir; the mate came on deck a few minutes before.

"*Q.* A few minutes before the captain?

"*A.* Yes, sir.

"*Q.* So that, from quarter of three until about quarter of four, you and the man at the wheel were the only two on deck?

"*A.* Yes, sir.

"*Q.* How soon after the mate came on deck did the captain come?

"*A.* Yes, sir.

"*Q.* How soon after? my question is.

"*A.* He came just after him, sir.

"*Q.* Was this after the one bell?

"*A.* Yes, sir.

"*Q.* Neither of them was on deck until after the one bell?

"*A.* No, sir.

"*Q.* And that sounded at ten minutes to four?

"*A.* Yes, sir.

"*Q.* Who was the man at the wheel?

"*A.* A Swede. I think his name is Broden.

"*Q.* Now, when it became foggy, there was no one on deck but you and the man at the wheel?

"*A.* No, sir.

"*Q.* Which of you was in command of the vessel, — you, or the man at the wheel?

"*A.* There was neither of us in command, so far as I know.

"*Q.* You didn't give him any orders, did you?

"*A.* No, sir.

"*Q.* Did he give you any?

"*A.* No, sir."

Williams, Ints. 63–81, pp. 63–64.

Captain Page claims that he was on deck during his watch from twelve to four o'clock, except as he went below several times to consult his chart (Page, Int. 31, p. 15; Ints. 188–199, p. 23). In this he is contradicted by Williams. Upon his own statement, he was below when the steamer was heard and reported (*Id.*, Int. 38). He was in the cabin when he heard Williams say, "There is a steamer." At that time "the man at the wheel was in command of the vessel; that was Broden" (Page, Ints. 219–221, p. 25).

The mate Mullins's watch did not begin until four o'clock. He was called before four, and came on deck about eight minutes to four o'clock (Mullins, Int. 30, p. 34). When he got on deck, the steamer's whistle had been heard. When the mate was called, Fred, the boatswain (presumably Broden), told him that a horn was heard a little on the lee bow. He then had to put on his shoes and hat, and get on deck (Mullins, Ints. 178–183, p. 41).

Wilson was in mate's watch, and did not come on deck until four o'clock — called ten minutes before; when he got on deck, the steamer's whistle had been heard (Wilson, Dep. Ints. 12–14, p. 53). After he was called he remained in the forecastle until four o'clock, and then went on deck to relieve Williams. He didn't see the mate forward until after this. The mate came forward after he relieved Williams (Wilson, Ints. 93–109, p. 58).

Abbott, the cook, turned out at one bell (ten minutes to four) to make coffee; came on deck, heard the steamer just as he went into the galley to light his fire, and then came out and remained somewhere about the deck until the collision (Abbott, Ints. 105–118, p. 51).

Broden's statement is simply that he was at the wheel from two o'clock until four A.M., or a few minutes before, when his watch was relieved, when he at once went below (Broden's statement, p. 67).

Coleman relieved Broden, and took the wheel at four A.M., and remained at it until the collision at 4.10 A.M. (Coleman's statement, p. 68).

It seems, then, that — at least from the time the fog shut in, about three o'clock, until the steamer was heard — there was no officer in command on the schooner's deck, if we believe the lookout Williams. If we believe the master, Captain Page, he was intermittently on deck, and assumed that when he went below, the man at the wheel, whom he says he regarded as boatswain, had command. "*Q.* When you went below, who had charge of the deck? *A.* The man Broden; he acted as boatswain" (Page, Int. 34, p. 15). Broden claims no such authority, and Williams expressly says no one was in command. "There was neither of us in command, as far as I know." (Williams, Ints. 77-81, p. 64).

The schooner's evidence is agreed that, at the critical moment when the steamer is heard in the fog, only the man at the wheel and the lookout are on deck, and neither of them in command. The lookout took the fog horn of his own accord, without orders, and Broden was supreme at the wheel. "*Q.* What suggested to you getting the horn at quarter to three? *A.* I started to blow the horn on my own account as soon as it became foggy" (Williams, Int. 82, p. 64).

This was the navigation, or absence of proper navigation, for the hour preceding the collision: a vessel left to the lookout to use his judgment and convenience in blowing the fog horn, and the man at the wheel to steer as he saw fit.

The result might be expected. In the absence of any officer, the whistle of the steamer is heard. The situation is critical; the vessels are approaching, as Judge NELSON finds, at a speed of eighteen or nineteen knots an hour, — a mile in three to four minutes. In this situation, with only two men on the deck of the schooner, with no officer in command, the lookout has to desert his post and his fog horn (at the very moment when it was most important to sound it and keep an alert lookout), and

come aft, take the wheel, and send Broden down into the cabin to call master and mate. During this critical time, as the vessels were approaching in the fog, Williams was the only seaman on deck, and busy at the wheel. During that time no fog horn was sounded, and no lookout kept.

The situation is stated by Williams upon cross-examination: —

"*Q.* Did you blow it all the time during that hour?

"*A.* Yes, sir; till one bell struck, and I had to go and relieve the man at the wheel to call the watch.

"*Q.* And when one bell was struck, no one was blowing the horn?

"*A.* No, sir.

"*Q.* And when you went aft, until he came forward, there was no one forward on the vessel?

"*A.* No, sir.

"*Q.* And that was somewhere between ten minutes to four and four o'clock?

"*A.* Yes, sir.

"*Q.* For how many minutes was there no one on the forward part of the vessel?

"*A.* About two or three minutes.

"*Q.* Did you give any orders to the man that relieved you?

"*A.* I gave him orders to report steam whistles.

"*Q.* You didn't report it yourself?

"*A.* No, sir. He went down below and called the captain and called the mate. I told him to report it.

"*Q.* That was at one bell?

"*A.* Yes, sir. I always used to take the wheel at one bell, while he went and called the mate.

"*Q.* Who was the man you are speaking of, who called the master and mate?

"*A.* Broden.

"*Q.* The man who was at the wheel?

"*A.* The man at the wheel.

"*Q.* Then you went and took the wheel, and he was down below, calling the master and mate?

"*A.* Yes, sir.

"*Q.* And that was after you heard the steamer?

"*A.* Yes, sir.

"*Q.* How long after you took the wheel was it?

"*A.* After I heard the steamer, — it was about four or five minutes after.

"*Q.* It was four or five minutes after you heard the steamer before the captain came on deck?

"*A.* Yes, sir; and then it was just as much as I could make it out then that it was a whistle.

"*Q.* But you were sufficiently certain that it was a steamer to send down for the captain and the mate?

"*A.* Yes, sir.

"*Q.* That was your whole object in sending the man at the wheel down below, wasn't it?

"*A.* Yes, sir.

"*Q.* Because you thought you were approaching some other vessel?

"*A.* Yes, sir."

Williams, Ints. 95–111, pp. 65, 66.

Captain Page practically corroborates this: —

"*Q.* Who was there forward when you went forward after coming up from the cabin?

"*A.* There was no one there for about one minute.

"*Q.* When you came up from your cabin, there was not any one forward of your quarter deck?

"*A.* No, sir.

"*Q.* And until you went forward, you were the only person forward?

"*A.* Yes, sir.

"*Q.* Then, from the time you went forward until Williams got there, your fog horn was not blown?

"*A.* No, sir; it was only about two minutes."

Page, Ints. 238–248, p. 26.

This absence of the officer from the deck, and the consequent necessity of abandoning the lookout in order to take the wheel while the man at the wheel went below to call the officers, were gross negligence in the management and navigation of the schooner.

"The officer in charge should be always on deck; he should not leave the deck in charge of a junior officer when another vessel is approaching, so as to involve risk of collision."

Marsden, Collision, p. 439.
The *Arthur Gordon*, Cush. 270.
Khedive, 5 App. Cas. 876.
Zadok, 9 P. D. 114, 118.

"The conduct of the captain in going below during his watch, and not remaining on deck to see that the seamen were at their posts and attending to their duty, was hardly consistent with good seamanship." — TANEY, C. J.

Peck *vs.* Sanderson, 17 How. 178, 182.
The *Charles L. Jeffrey*, 55 Fed. Rep. 685.
City of Augusta, 80 *Id.* 297.

2. *The schooner's fog horn.*

(*a*) The witnesses from the steamship agree that one single blast of the fog horn, presumably from this schooner, was heard. Captain Savage thought he heard a second signal on his beam. This probably was from the other vessel heard after the collision. The captain, first officer, second officer, lookout, and quartermaster are all on deck, attentive to duty, and hear the single blast of the fog horn on the port bow.

Captain Savage, Ints. 45–50, pp. 70, 71.
1st officer Howlett, Ints. 33–39, p. 82.
2d officer Jensen, Ints. 15–21, p. 87.
Lookout Wall, Ints. 21–33, p. 90.
Quartermaster Jones, Ints. 19–23, p. 94.

That a fog signal is not heard is not conclusive proof that it is not sounded. Aberration of sound may account for the inability to hear. But, in view of the fact that one blast of the horn was heard, and in view of the evidence regarding the then management of the schooner, the fact that only one blast was heard is strong evidence that only one blast was sounded while the steamer was within hearing distance.

(*b*) The schooner's fog horn was of an old patent, working with a piston pressed down a tube lashed to the windlass. The sound was made by both hands pressing down the piston the length of the tube. It was purchased as an old horn from another vessel. The duration of the blast depended upon the time occupied in pressing down the piston; the quicker the pressure, the shorter the blast.

See Captain Page, Ints. 308–329, pp. 30, 31.
Mullins, Ints. 198–209, pp. 42, 43.

(*c*) The fog began about three o'clock. Williams, on lookout, of his own volition, began to blow the fog horn. It was the first time he ever used it (Williams, Int. 86, p. 64). He says he blew it until one bell struck (3.50 A.M.), when he had to go and relieve the man at the wheel. This was after the steamer's whistle had been heard. For two or three minutes there was no one forward (*Id.*, Ints. 94–100, p. 65). For this space of time, whatever its duration, no fog horn was sounded on the

schooner. It was just the time when, if blown, it would have been heard by and guided the steamer.

The mate Mullins comes on deck some time before four o'clock, after the steamer is heard, and hauls in the log, while Wilson at four goes on lookout. The mate apparently then goes forward, and takes the fog horn from Wilson. "I blew the horn myself then, and Wilson kept a lookout" (Mullins, Ints. 67–69, p. 36). "I took it because I could blow it louder than he could, I thought. Because it held considerable wind, and I was stronger, and I knew just how to blow it, and blow it properly" (Int. 230, p. 44). Wilson thinks he blew it twice (Ints. 37–38, p. 55). The mate blew it twice before the collision (*Id.*, p. 4). "He said he would blow the horn for a couple of blasts" (Wilson, Ints. 37–38, p. 55). Three different men, then, were working, or trying to work, this fog horn after the steamer had been heard. Why did the mate take it at the last moment, if the lookout was blowing it properly? Besides, there is the admitted intermission of uncertain duration when Williams went aft to take the wheel, and have the officers called.

3. *Schooner's refusal to starboard after seeing the steamer trying to avoid her.*

The evidence is from Captain Page. He says he saw the steamer off his starboard some two thousand feet. Probably, as the steamer was heard fifteen or twenty minutes before collision, she was seen much farther off. This is also shown by the number of points the steamer swung under the port wheel, and she was seen before she began to turn. He says, "I noticed she was coming directly at us, head for us, and shortly directed her course to starboard (that is, he ported his helm). I noticed that she was swinging to starboard" (Page, Ints. 64–68, p. 17). She was then twelve hundred feet distant. The mate

sung out, "Hard down the helm" (that is, starboard); and the master, notwithstanding the advice, ordered man at wheel to hold his course (Page, Int. 89, p. 18); and, notwithstanding his knowledge of the approach and swinging of the steamer for the obvious purpose of avoiding him, obstinately keeps on and runs under the steamer's bow.

Upon cross-examination he testifies: —

"*Q.* How near to you should you judge the steamer was when you saw she was swinging to starboard?

"*A.* About twelve hundred feet.

"*Q.* So that for eight hundred feet she came right on, and then began to swing to starboard?

"*A.* Yes, sir.

"*Q.* And very soon she began to head for you, head on?

"*A.* Yes, sir.

"*Q.* Why didn't you starboard your wheel?

"*A.* It was not my place to do it.

"*Q.* And was that the only reason why you didn't do it?

"*A.* Yes, sir.

"*Q.* And from that time until you saw her under the port wheel, although your mate told you it was a proper thing to do, you refused to put your wheel to starboard?

"*A.* I did, because I was doing what was right.

"*Q.* You meant to keep on, whether the steamer went through you or not?

"*A.* I had the right of way.

"*Q.* Exactly; and you meant to keep it, whether you cut the steamer down, or whether the steamer cut you down? You were going to Boston?

"*A.* I was going to Boston, and I had the right of way.

"*Q.* And you were not going to stop for anything in front of you?

"*A.* I was going to change for anything that had the right of way of me.

"*Q.* You could have steered either way?

"*A.* Yes, sir."

Page, Ints. 263–273, pp. 27, 28.

From the master's estimate of time and distance, with a free wind and a speed of seven knots, with equal ability with his spread of canvas to turn in either direction, advised by his mate to starboard, seeing the steamer swinging to starboard and trying to avoid him, knowing the steamer was near and porting, and changing her course solely for this purpose, — yet, with every means of assisting her, he keeps on his course, comes up with the swinging steamer, and puts himself under her bows.

While undoubtedly the duty of the schooner, under ordinary circumstances, was, under Article 22, to hold her course, the special circumstances existing here show that, when she saw the steamship swinging to starboard under the port wheel, for the purpose of avoiding collision, the schooner should have starboarded to assist the endeavor of the steamship to keep out of her way. The schooner, with full knowledge of the situation, and ability to control it, was then under Articles 23 and 24 : —

"Art. 23. In obeying and construing these rules, due regard shall be had to all dangers of navigation, and to any special circumstances which may render a departure from the above rules necessary in order to avoid immediate danger.

"Art. 24. Nothing in these rules shall exonerate any ship, or the owner or master or crew thereof, from the consequences of any neglect to carry lights or signals, or of any neglect to keep a proper lookout, or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case."

Act of Mch. 3, 1885. 23 Sts. at large, 442.

The schooner's only excuse is the statutory duty of keeping her course. But no such duty then existed. The circumstances were special, and the statutory duty was to alter her course. It was the very case to which Articles 23 and 24 were made to apply.

"Even flagrant fault committed by one of two vessels approaching each other from opposite directions does not excuse the other from adopting every proper precaution required by the special circumstances of the case to prevent a collision."

The *Maria Martin*, 12 Wall. 31.
America, 92 U. S. 432, 438.
Sunnyside, 91 U. S. 208.

"While the general rule is, that the sailing-vessel should keep her course, this rule presupposes that the steamer discovered, or ought to have discovered, the sailing-vessel at a sufficient distance to avoid her by changing her own course. But where, as in the present case, they are brought suddenly and unexpectedly close to each other, and the ordinary rules of navigation will not prevent a collision, it is the duty of each to act according to the emergency, and to take any measure that will be most likely to attain the object. Experienced seamen testify that the mode adopted on the part of the 'Columbus' was the usual and best one, and we see no reason to doubt it. And if the 'Columbus' had been seen from the 'Missouri' when the engine was stopped, she might, it appears, have passed her in safety. Not a moment appears to have been lost on board of the steamer in giving or in executing the orders which the occasion called for, and we think she is not in any degree responsible for the disaster." — TANEY, C. J.

Peck *vs.* Sanderson, 17 How. 178, 182.

"There is no idea appertaining to keeping a course which justifies holding to it in such way as to bring on a peril. The only principle inherent in it is to so act as to enable the other vessel, on whom the duty rests, to adopt with success means of getting out of the way." — BLATCHFORD, J.

The *Elizabeth Jones*, 112 U.S. 514, 524.

"You may depart, and you must depart, from a rule if you see with perfect clearness, almost amounting to certainty, that adhering to the rule will bring about a collision, and violating a rule will avoid it; and, indeed, this is provided for by the article." And, again, "You have no right to stand in a difficulty upon a right, though it may be a perfectly good right, obstinately, recklessly, and regardless of the safety of others." — Dr. LUSHINGTON.

The *Boanerges*, 2 Mar. Law Cas. 239.
Legatus, Holt, 217.

"Although there may be a rule of the sea, yet a man who has the management of one ship is not to be allowed to follow that rule to the injury of a vessel of another, where he could avoid the injury by pursuing a different course." — BEST, C. J.

Handayside *vs.* Wilson, 3 Car. & P. 528.

"Each case depends entirely on its particular circumstances, — the position and distance of the vessels." — ESHER, M. R.

The *Vindomora*, 14 P. D. 172.
Zadok, 9 *Id.*, 114.

II.

FAULTS ON THE PART OF THE STEAMSHIP.

The appellee did not appeal from the decree of the District Court finding the steamship in fault for immoderate speed. This and the other faults alleged by the appellants are, however,

important as bearing upon the faults of the schooner and the effect of them in causing or contributing to the collision. Consideration of them may also be of consequence upon the equitable division of damages. For these reasons reference is here made to the evidence of fault on the part of the steamship.

(1) *Speed of steamship.*

The facts as stated by the master and officers of the steamship are not contradicted.

The steamship had been going at a rate of ten or eleven miles an hour, and it is not contended that this was moderate speed in a fog, within the meaning of the rule and the decisions under it. It was contended that the rate of speed did not contribute to the collision.

A single blast of a fog horn was heard somewhere off the port bow of steamship. The order was immediately given and obeyed to stop and reverse. Under the reversed engine the speed was reduced, between the time the fog horn is heard and the schooner seen, to four or five miles an hour (Captain Savage, Ints. 51–63, p. 71). The engine was stopped and reversed at 3.55 o'clock (Engineer Henry, Ints 12–22, p. 98; engineer's log book, p. 98). This was some minutes before the collision. The reduction in speed shows that the steamship was under perfect control, and could have stopped, and would have done so, had she not been deceived by the single blast of the fog horn on the port and by the speed of the schooner. The sudden appearance of the schooner attempting to cross the course of the steamer obliged the latter to start full speed, and continue under the port wheel, in hopes of passing the schooner.

The facts are testified to by the officers and crew of the steamship.

Captain Savage, Ints. 49–97, pp. 71–73.
1st officer Howlett, Ints. 34–74, pp. 82–84.
2d officer Jensen, Ints. 15–30, pp. 87–88.
Lookout Wall, Ints. 15–48, pp. 89–91.
Quartermaster Jones, Ints. 19–43, pp. 94–95.

The one blast heard indicated that the vessel was on the starboard tack; that is, heading between southeast and south, and off the port bow. The swinging to starboard under the port wheel would tend still further to separate the vessels, and the quick obedience to her engine would have brought the steamship to a full stop before the vessels came in sight. The trouble, therefore, was not in the rate of speed, which was under control, but in the false signal from the schooner and her excessive speed. These are discussed later.

As showing that the steamship was under perfect control, attention is called to the testimony of Wilson, lookout on the schooner and in the best position to know, who says the speed of the steamer was about seven knots (Wilson, Int. 47, p. 55), and this was after she had started up full speed ahead. She had not recovered her headway.

The fact of collision shows that at the time the steamer could not be going as fast as the schooner. The schooner is heard a point off the port bow, and the steamer puts wheel hard a-port, and continues to swing to starboard until the collision; so that during this time the schooner must go fast enough to make the one point and the additional distance made by the steamer's swing to starboard.

The more the steamer got round to the northward and angled forward when the vessels came together, the slower the steamer and the faster the schooner were going.

(2) *Steamship not stopping and reversing.*

The answer is, she did stop and reverse the moment she heard the fog horn. The fact is proved beyond question by the officers and men on the steamer (see evidence cited, *supra*).

Having given the order to stop and reverse, the master would not have changed the order but for the fault of the schooner. The schooner was not on the course she signalled, and was not going at a moderate speed; so that when discovered,

the master in the exercise of his best judgment, under circumstances *in extremis*, had to ring up as the only chance to get by.

Having taken due precaution to stop and reverse, it will not be presumed that the master afterward changed the order except under necessity. His conduct shows vigilance, alertness, and honest endeavor to avoid a collision made possible by the fault of the schooner.

(3) *Steamship's lookout.*

The evidence regarding this comes necessarily from the steamship.

Her navigation during the night and morning is stated by her witnesses.

During the evening, for greater precaution, the steamship took the outside route, instead of the usual course through Vineyard Sound. Her master, an experienced captain, was in command, and, with the first officer, was in the open pilot house. The second officer came in before the schooner was heard. Wall, an experienced seaman, had been stationed as lookout since two o'clock. A proper quartermaster was at the wheel.

A single blast of the fog horn is heard three-quarters or one point off the port bow, by the lookout, and reported soon after the bell sounded to call the watch at 3.50 o'clock (Wall, Ints. 23–40, pp. 90, 91). The first officer replied all right (*Id.*). The master also heard this single blast (Savage, Ints. 45–50, p. 71). The first officer heard it a point on the port bow (Howlett, Ints. 34–39, p. 82). The second officer heard it one or one and one-half points off the port bow (Jensen, Ints. 15–23, pp. 87–88). The quartermaster locates it about a point on the port bow (Jones, Ints. 15–25, p. 94).

Were these officers and men all inattentive? Could they have mistaken the sound? On the contrary, the time, the distance, the orders on board the steamship, all indicate attention and quick effort to avoid collision.

After the blast was heard, and the speed and course of the steamship changed to avoid it, there is every presumption of attention to hear and see the vessel. The steamship must locate the vessel, if only to come back to her course and speed.

The schooner was white, with a spread of white sails, and very low in the water. She was seen looming up in the fog, soon after the fog horn was heard, by all the men on steamer's deck. It is impossible to hold that she was not seen as soon as she could be. No other object attracted the attention of the steamship. She was under a reversed engine and a hard-to-port wheel, and obviously on the watch to find and avoid the sailing-vessel.

The failure to hear the fog horn on the steamer, even if in fact it was blown as required, is not necessarily negligence. It is well recognized that atmospheric and natural causes may prevent the hearing of a fog horn by the most attentive listener. The question is not, Did we *hear?* but Did we *listen?* If we used proper effort, and gave proper attention, and were unable to hear, there was no fault.

So, failure to see lights at night is not necessarily negligence. The question is not, Did you *see?* but Did you *look?*

"If the lookout was competent, and at his proper post, the presumption of law that he did his duty is not, we think, overcome by the fact that he did not see the lights of the brig until just before the collision."— Woods, J.

The *Annie Lindsay*, 104 U.S. 185, 191.
Johns Hopkins, 13 Fed. Rep. 185.
Negaunee, 20 *Id.*, 918.
L. D. Baker, 24 *Id.*, 814.

"It was from no want of proper vigilance on the part of those on board the 'Iduna' that the fog horn was not heard, and

therefore their conduct must be judged precisely as though no fog horn had been blown at all." — Sir J. HANNEN.

The *Zadok*, 9 P. D. 114, 118.

"I desire to say emphatically that it is impossible to infer, from the fact that a whistle is not heard in a fog, that therefore there is an inefficient lookout on the vessel which does not hear it." — Sir J. HANNEN.

The *Rosetta*, 59 L. T. (N. S.) 342, 344.

(4) *Steamship's porting instead of starboarding.*

(5) *Trying to cross the schooner's bow.*

These two charges may be considered together.

It is true, the wheel of the steamship was put hard to port as soon as the fog horn was heard, and kept there until the collision.

All the witnesses from the steamship say the horn was heard about a point off the port bow. As the schooner's witnesses all heard the steamer on the starboard, the schooner was necessarily on the steamer's port. The single blast heard indicated a vessel on the starboard tack; that is, sailing southeast or southerly of that.

With a vessel off the port bow, heading southeast, on the starboard tack, there can be no question that the port wheel was proper. Every turn of it turned the steamer from the approaching vessel, and made collision impossible.

Every turn of the wheel to starboard would turn the steamer towards the sound of the unseen vessel, and have been improper navigation.

With the duty of keeping out of the way, and the right to do it on either side or in any way, it was proper for the steamer to turn from the sound rather than towards it.

When the schooner was seen, the steamer was swinging under the hard-to-port wheel, and it was too late to change the manœuvre with success. The only safety was in continuing to swing to starboard, and put on full speed; and this would have been successful but for the speed of the schooner, and her refusal to assist the steamer by starboarding and swinging to port away from the steamer.

Under such circumstances much must be left to the judgment of the master. He explains the reason for porting the wheel (Ints. 70–90, pp. 72–73). He says that he ported when he heard the fog horn off the port to swing away from it. After he saw the schooner, it was too late to starboard. If he made such a change, the schooner would sink the steamer. "I wanted to swing fast enough to swing on the same angle with him if possible" (Savage, Int. 79, p. 72). The attempt was, not to cross the schooner's bow, but to swing round on a parallel line on the schooner's starboard side. The angle of collision, with the steamer glancing forward, shows that the manœuvre was very nearly successful. A little assistance from the schooner would have accomplished it.

The act of the master must be judged from his point of view, and from the facts and situation as they appeared to him, not from the facts as they may afterwards be proved.

"After a misfortune has happened, it is easy to see how it might have been avoided. . . . But this is not a fair mode of trying the case." — McLean, J.

Goslee *vs.* Shute, 18 How. 463, 466.

"We do not see how the Court could find otherwise than that they were free from fault or negligence. Perhaps they might

have done something else which would have been better. The event is always a great teacher. . . . But these possibilities are not the *criteria* by which they are to be judged. The question is, Did they do all that reasonable prudence required them to do under the circumstances?" — BRADLEY, J.

The *Nevada*, 106 U.S. 154, 157.

The schooner's witnesses are in doubt whether, if steamer had starboarded, the collision would have been avoided. "She might possibly have cleared us; it is hard to tell" (Mate Mullins, Int. 99, p. 37). "She might have cleared us, and might not, I couldn't say; probably she may have" (Lookout Wilson, Int. 61, p. 56). Clearly this is mere matter of guess-work, which will not outweigh the deliberate and responsible judgment of the master.

III.

The Division of Damages.

The appellee has not appealed from the decree imposing equal division of damages. It has assumed, under the cases cited below, that mutual fault for collisions always imposed equal division of the loss, without inquiry into the question of degree of fault. The admiralty principle of equal division where both vessels are in fault is certainly more favorable to the libelling vessel than would be the common law rule that contributory negligence defeats the action. Had these appellants sued at the common law, they would have recovered nothing.

1. If the court departs from the previous practice and apportions the damages otherwise than in equal division, it should consider the evidence in regard to each fault and the degree of such fault, and then appraise the relative importance and effect of each.

The schooner alleges and attempts to prove *five* faults against the steamship (Libel, pp. 2, 3). The steamship alleges *four* faults against the schooner (Answer, pp. 5, 6). Upon the record in the case it is submitted that the schooner was more in fault than the steamship, because she was not only going as fast as she could in the fog with no attempt to reduce her speed, but she was doing this with no officer on deck, and no one on the lookout forward at the critical moment of the approach of the steamship. As each vessel was found guilty of the same fault (immoderate speed) and, of course, in the same place and weather, and each was violating the same laws of navigation, it is difficult to see the equity of imposing a greater liability in the division of the damage upon the steamship than is imposed upon the schooner. It is equally difficult to see upon what basis and in what proportion any unequal division can in the equity of the admiralty be made.

2. The libellants sue as "sole owners of the schooner," "*for and in behalf of themselves, and as the lawful bailees of the cargo of sugar and molasses late on board of said 'Golden Rule'*" (Libel, Record, p. 2). Millard, one of the two owners of the schooner, was also the owner and consignee of part of the cargo, the agreed value of his consignment being $929.90. Owners of schooner bring admiralty proceeding to recover the entire loss to both schooner and cargo. The Court decided, in this proceeding by them, that each vessel was in fault, and under equal liability for the aggregate damage. If steamship had been injured, one-half of her damage could be charged

to the schooner. Steamship and schooner were joint tort-feasors, not in contract relation, but under a liability to be assessed and distributed as between them, according to the equitable principles recognized in the admiralty as the "Chancery Court of the Sea." Were the action at common law, the contributory negligence of the libellants would bar recovery of any damages for the loss of their vessel. The Court, with its equity jurisdiction, divided the damage. As the vessel, freight, etc., were worth more than the cargo, upon this division the steamship, after paying the whole value of cargo, and deducting one-half in recoupment from half the value of schooner, freight, etc., still owes the schooner $597.87. The decree of the Court follows in form and principle the practice in the First Circuit recognized and enforced by Judge LOWELL in the "Hercules," 20 Fed. Rep. 205.

This equity of divided damage — that is, of requiring as between two tort-feasors in the admiralty as equal a distribution of the loss as can be decreed — has been the settled equity of the English Admiralty since the *dicta* of Sir WILLIAM SCOTT, in the Woodrop Sims, 2 Dods. Adm. 83, accepted in the House of Lords in 1824, in Hay *vs.* Le Neve, 2 Shaw Scotch App. Cas. 395.

In the latest English case Lord BLACKBURN says: —

"When the cause of the accident is the fault of both, each party being guilty of blame which causes the accident, there is a difference between the rule of admiralty and the rule of common law. The rule of common law says, as each occasioned the accident, neither shall recover at all, and it shall be just like an inevitable accident, — the loss shall lie where it falls. Admiralty says, on the contrary, if both contributed to the loss, it shall be brought into hotch-potch, and divided between the two. Until the case of Hay *vs.* Le Neve, there was a question in the Admiralty Court whether you were not to apportion it according to the degree in which they were to blame; but now

it is, I think, quite settled, and there is no dispute about it, that the rule of the admiralty is, that if there is blame causing the accident on both sides, they are to divide the loss equally, just as the rule of law is that, if there is blame causing the accident on both sides, however small that blame may be on one side, the loss lies where it falls."

Cayzer *vs.* Carron Co., 9 App. Cas. 873, 881.

"The principle of the rule (of divided damage) is said to be equality of participation in a loss arising from a common fault."

Marsden, Collision, p. 136.

The rule was first accepted by the United States Supreme Court, in

The *Catharine*, 17 How. 170,

because "under the circumstances usually attending these disasters, we think the rule dividing the loss the most just and equitable, and as best tending to induce care and vigilance on both sides in the navigation." — Mr. Justice NELSON, p. 177.

The equity of such a division of damage, caused by mutual fault, has been recognized and enforced in many later decisions. See

The *Continental*, 14 Wall. 355.
Washington & Gregory, 9 *Id.*, 513.
Atlee *vs.* Packet Company, 21 *Id.*, 389.
The *Sunnyside*, 91 U.S. 208.
Alabama, 92 *Id.*, 695.

Juniata, 93 *Id.*, 337.
Stephen Morgan, 94 *Id.*, 599.
Virginia Ehrman, 97 *Id.*, 309.
City of Hartford, *Id.*, 323.
Connecticut, 103 *Id.*, 710.
Potomac, 105 *Id.*, 630.
Sterling, 106 *Id.*, 647.
Max Morris, 137 *Id.*, 1.

Spencer states the rule, "Where two or more vessels are equally at fault, and liable in damages to another, the owner of the latter, or its cargo, may proceed against the offending vessels, jointly or separately, to recover the *entire loss*, and no apportionment of the loss between the offending vessels will be made so far as the right of entire recovery of the injured vessel is concerned; but, as between themselves, the offending vessels may require an apportionment of the loss."

Spencer, Collisions, Sect. 191,

citing

The *Franconia*, 16 Fed. Rep. 149.
Briggs *vs.* Day, 21 *Id.*, 727.
Troy, 28 *Id.*, 861.
Britannia, 39 *Id.*, 395.

This equity of equal division of the loss, when caused by mutual fault, is not affected by statute limitation of liability, at least, not until the balance is struck between the two offending vessels. This was settled by

The *North Star*, 106 U.S. 17.

"The rule of admiralty in collision cases, as we understand it, is that, where both vessels are in fault, they must bear the damage in equal parts, the one suffering least being decreed to pay to the other the amount necessary to make them equal, which amount, of course, is one-half of the difference between the respective losses sustained. When this resulting liability of one party to the other has been ascertained, then, and not before, would seem to be the proper time to apply the rule of limited responsibility, if the party decreed to pay is entitled to it. It will enable him to avoid payment *pro tanto* of the balance found against him. . . . These authorities conclusively show that, according to the general maritime law, in cases of collision occurring by the fault of both parties, the entire damage to both ships is added together in one common mass, and equally divided between them, and thereupon arises a liability of one party to pay to the other such sum as is necessary to equalize the burden. This is the rule of mutual liability between the parties." — Mr. Justice BRADLEY.

The *North Star*, 106 U.S. 17, 20, 22.
Atlas, 93 *Id.*, 302, 313.
Manitoba, 122 *Id.*, 97.

And see

Stoomvaart, etc., *vs.* P. & O. Steam Navigation Co., 7 App. Cas. 795.

That is, the primary question — in the case at bar upon this point the only question — is, What does the one vessel owe to the other upon the mutual accounting for joint fault? The question of exemption or limitation arises only after the amount of the debt is fixed between them. In this mutual accounting the whole damage, whether to both or either vessel, or to the cargoes, must be considered and adjusted.

3. The Harter Act (Chapter 105, Act of February 13, 1893) does not change the equity of equal division of loss between two offending vessels. That Act relates simply to the contractual relations between a cargo and its carrier. It has no application to an outside third party. The Act, in effect, substitutes a statutory for a contract bill of lading. It does not affect the tort liability for damage done by another vessel. This steamship gains no benefit from any contract or statute exemption existing between the schooner and her cargo. Nor does the schooner acquire any added right as against the steamship by reason of such exemption. The joint damage done by the mutual fault is adjusted (so far as the steamship is concerned) as between the two vessels, not as between the schooner and her cargo. The relation of that cargo to the schooner no more concerns the steamship than does the question whether the cargo or schooner was protected by insurance, by English Exempting Bill of Lading, or by the Limited Liability Act of 1851. The question now before the Court is not, what do we owe the cargo, but what in equity do we owe the schooner?

This Court has decided that the Harter Act merely affects the relative rights existing between a vessel and her cargo, and "the statute does not affect the liability of a vessel to other vessels with which she may come in collision."

"The act was an outgrowth of attempts made in recent years to limit, as far as possible, the liability of the vessel and her owners, by inserting in bills of lading stipulations against losses arising from unseaworthiness, bad stowage, and negligence in navigation, and other forms of liability which had been held by the Courts of England, if not of this country, to be valid as contracts, and to be respected even when they exempted the ship from the consequences of her own negligence. . . . These provisions (of the statute) have no possible application to the relations of one vessel to another, and are mainly a re-enactment of certain well-known provisions of the common law applicable to the duties and liabilities of vessels to their cargoes. The

fact, too, that by Section 6 the various sections of the Revised Statutes which embody the Limited Liability Act are preserved unimpaired, would seem to indicate that the later act was not intended to receive the broad construction claimed."—Mr. Justice BROWN.

The *Delaware*, 161 U.S. 459, 471.

IV.

APPLICATION OF THE HARTER ACT.

The appellee further submits that the Harter Act (Chap. 105, Act of February 13, 1893) does not apply to this British schooner on her foreign voyage from Porto Rico to Boston. The obvious purpose of the Harter Act, as stated in the "Delaware" (*supra*), was to relieve ship-owners to a certain extent from the inability imposed by judicial decision to contract against liability for the negligent acts of agents in the navigation of the vessel. (Liverpool, etc., Co. *vs.* Phœnix Insurance Co., 129 U.S. 397). It was unnecessary to give this statute relief to a British vessel, because her owner, under English law, could secure it by contract. The common law principle which the act was intended to modify was only of local recognition and application.

The language of the Harter Act does not justify its broad application to all and any vessels of whatever nationality as contended by appellants. The act is "an Act relating to navigation of vessels, bills of lading, and to certain obligations, duties, and rights in connection with the carriage of property." The

first section forbids "the manager, agent, master, or owner of any vessel transporting merchandise or property from or between ports of the United States and foreign ports," from inserting exemption of liability for loss from negligence in the loading, stowing, and delivery of cargo. Section 2 applies to "any vessel transporting merchandise or property from or between ports of the United States of America and foreign ports." Section 3, creating the limitation of liability, is applied in the same language to the same class of vessels. Section 4 requires that vessels, again described in the same language, shall issue bills of lading. Section 5 imposes upon "the agent, owner, or master of the vessel guilty of violation" of the provision, a fine which "shall be a lien upon the vessel." While it is true the words "any vessel" are used in the act, they will be construed in view of the intention of Congress in the new legislation, and the purpose sought to be accomplished, and should be limited to such purpose. There is no presumption that Congress was legislating for the whole commercial world. The fair presumption is that it was providing for our own commerce, directing the form of our own bills of lading, and imposing the liability to fine upon our own vessels. Section 5, prescribing a fine of two thousand dollars upon any vessel violating the act, certainly could not be enforced against a foreign vessel outside the jurisdiction.

The application of the Harter Act to foreign vessels was made by Judge BROWN in the "Etona," 64 Fed. Rep. 880, and was recognized in the Circuit Court of Appeal for the Second Circuit in the "Silvia," 68 Fed. Rep. 230. These decisions are based upon the analogy between the Harter Act and the Limited Liability Act of 1851, and the application of the latter to foreign vessels under the decision in the "Scotland," 105, U.S. 24. It is submitted that the two acts are not analagous. The Limited Liability Act, as stated by Mr. Justice BRADLEY in the

case of the "Scotland," and in repeated cases, was a statute recognition of a principle of general maritime law, and Congress might well be considered as intending to give its benefits to all vessels without regard to nationality. But it cannot be presumed that Congress intended to regulate the form and issue of a bill of lading by a foreign vessel without expressing any limitation of the port where, or the citizenship of the person to whom, such bill of lading was to be issued, and then impose an uncollectable fine for violation. In fact, in the case of the "Scotland" (a collision tort committed upon the high seas), Mr. Justice BRADLEY expressly recognizes the distinction. He says (105 U.S. 30): "Some laws, it is true, are necessarily special in their application to domestic ships, such as those relating to the forms of ownership, *charter party*, and nationality; others follow the vessel wherever she goes, as the law of the flag, such as those which regulate the mutual relations of master and crew, and the power of the master to bind the ship or her owners."

It is submitted that the history, purpose, and language of the Harter Act indicate an intention to benefit the commerce of the United States rather than to impose burdens upon it, or allow a privilege to a foreign vessel at the expense of a domestic vessel. As Judge PUTNAM, in the opinion of the Court in this case, said: "While the statute in question by its letter applies to any vessel 'transporting merchandise or property to or from any port in the United States,' we are not prepared to determine that its benefits were intended to extend to foreign vessels; if it does, the result of the schooner's proposition would be that a provision of statute, historically known to have been intended for the encouragement of our domestic commerce, doubles, in the present case, the burden which the general admiralty law imposes on a domestic vessel, for the sole benefit of the owners of a foreign one" (Record, p. 108).

CHAS. THEO. RUSSELL,
ARTHUR H. RUSSELL,
Proctors for Appellee.

THE CHATTAHOOCHEE.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

No. 27. Argued March 6, 1899. — Decided April 3, 1899.

The Golden Rule, a Canadian topsail schooner with twelve sails, all of which with a small exception she was carrying, was sailing off Nantucket Shoals at a speed of seven knots an hour, in a fog so dense that the hull of another vessel could not be seen more than a few hundred feet off. The Chattahoochee, an American steamer, came up at an angle in the opposite direction with a speed of ten or twelve knots an hour. The schooner was sounding a foghorn, and the steamer a steam whistle. When the steam whistle was heard on the schooner she kept on her way at full speed. When the foghorn was heard on the steamer, order was given and obeyed to stop and reverse, and the wheel was put hard-a-port. Upon seeing the schooner the steamship engines were put at full speed ahead, for the purpose of clearing it; but a collision took place, and the schooner sank almost immediately. The sunken vessel had a valuable cargo on board. It was held below that both vessels were in fault for immoderate speed, and the District Court, ruling that the damages should be divided, made a decree respecting such division which was modified by the Court of Appeals as hereafter stated. *Held:*

(1) That there can be no doubt as to the liability of the steamer, and, as no appeal was taken on her part she is estopped from denying that liability here;

(2) That the schooner, also, was proceeding at an immoderate speed, and was properly condemned therefor; and the cases bearing

Statement of the Case.

upon the question of what is immoderate speed in a sailing vessel, under such circumstances, are cited and reviewed;

(3) That the Court of Appeals did not err in deducting half the value of the cargo from half the value of the sunken schooner, and in limiting a recovery to the difference between these values; and in reaching this conclusion the court cites and reviews several cases, in deciding which the act known as the Harter Act has been considered and applied.

THIS was a libel for a collision which took place in the early morning of July 20, 1894, southeast of Nantucket Shoals, between the Canadian schooner Golden Rule and the American steamship Chattahoochee, resulting in the total loss of the schooner and her cargo.

The Golden Rule was a topsail schooner hailing from Liverpool, Nova Scotia, of about 200 tons burden, and rigged with twelve sails, including one double square sail on the foremast. Her length over all was 110 feet. She was bound on a voyage from Porto Rico to Boston with a full cargo of sugar and molasses, and, at the time of the collision, was sailing on her port tack, upon a course north by east, one half east, with a free and fresh wind five to six points abaft the beam. She was under full sail, except one half of the square sail forward, which was taken in about two hours before the collision. Her speed was the main point in dispute. At the time of the collision the weather was foggy, the wind blowing in moderate breezes from the southwest, and the mate was sounding a mechanical foghorn forward.

The Chattahoochee was an iron screw steamship of 1887 tons burden, 300 feet in length, and running on a line between Boston and Savannah. She left Boston in the afternoon of the 19th, and when off Cape Cod, her master, owing to the foggy weather, decided to take the outside passage by Nantucket, instead of her regular course through Vineyard Sound. The outside course was much clearer of vessels. Before the collision the steamship was eighteen miles off the South Shoal Lightship, on a course southwest half west, proceeding at her full speed of from ten to twelve knots an hour, and blowing her whistle at the statutory intervals after 12.30 o'clock. The

master and the first officer with the quartermaster were in the pilot-house, and a man was on the lookout forward.

From the above statement it will be seen that the two vessels were approaching upon courses which converged at an angle of about three points.

The officers of the schooner heard the steamship's whistle from two to four points off the starboard bow, a fact which was duly reported to the officer of the deck. The whistles of the steamship continued to be heard on the starboard bow until she came in sight some four or five lengths off, the schooner keeping her course and speed until the collision.

The master and lookout of the steamship heard the fog signal of the schooner about two minutes before the collision, apparently a point off their port bow. The order was immediately given and obeyed to stop and afterwards to reverse, and the wheel was put hard-a-port in order to locate the sound. When they first saw the sails of the schooner they bore one and one half points on the port bow of the steamer. During this time the helm of the steamer was hard-a-port. Upon seeing the schooner, the steamship, which was then swinging to starboard under her port helm, ordered her engines full speed ahead for the purpose of clearing the schooner. The schooner kept her course and the vessels came together at an angle of four points, the steamship striking the schooner forward of the foremast on the starboard side, sinking her almost immediately. The collision resulted in a total loss of the schooner with all her cargo and property on board. The steamship was uninjured.

The District Court was of opinion that both vessels were in fault for immoderate speed, and that the damages should be divided.

Damages were awarded to the libellants, as bailees for the owners of the cargo, to the amount of $17,215.17, and to the libellants, as owners of the vessel and for the value of certain personal effects of the crew, in one half the total amount of their loss, namely, $9205.45; and it was further ordered that the owners of the steamship might recoup from the said amount of $9205.45 the sum $8607.58, being one half of the

total damages to the cargo. An execution was ordered against the claimants of the steamship and its stipulators for the sum of $597.87, this being the difference between half the value of the schooner and the personal effects of the crew and half the value of the cargo for which the schooner was thus held responsible.

Upon appeal to the Circuit Court of Appeals, that court affirmed the decree of the District Court upon the merits; but modified the same with reference to the distribution between the owners and master of the Golden Rule on the one side and her mate and crew on the other, finding that, as neither the mate nor her crew were responsible for any fault in her navigation, the several sums awarded the mate and crew should have priority over the amounts awarded the owners and master. 33 U. S. App. 510.

Whereupon an application was made to this court by the libellants for a writ of certiorari, which was granted.

Mr. Eugene P. Carver for the Golden Rule and her owners. *Mr. Edward E. Blodgett* was on his brief.

Mr. Arthur H. Russell for the Chattahoochee and her owners. *Mr. Charles Theodore Russell* was on his brief.

Mr. Justice Brown delivered the opinion of the court.

There can be no doubt whatever of the liability of the steamer, and as she did not appeal, of course she is estopped to deny such liability in this court.

1. Whether the Golden Rule was also liable for excessive speed is a question of more difficulty. She was a topsail schooner, rigged with twelve sails, all of which she was carrying, except one half her double square sail on the foremast, which had been taken in. She was sailing on her port tack with the wind well abaft the beam, through a fog which did not admit of the hull of a vessel being seen more than a few hundred feet distant. It appears to have been a surface fog, as the crew of the schooner are confident they saw the masts

of the steamer some 2000 feet away. The District Court was of opinion that as she was sailing free, with a fresh wind, her speed could not have been less than seven or eight knots an hour. The Court of Appeals found only that she was making substantially all the speed of which she was capable. Her master admits that she was making from five to six knots; but as her log, which was taken in at 4 o'clock, registered twenty-eight miles for four hours, we think her speed may be safely estimated to have been seven miles an hour. While the commerce in this locality was not as great as it was in Vineyard Sound, it was not unlikely that they would encounter other vessels coming down the coast. Was seven miles a moderate rate of speed under the circumstances of this case?

Although the reports of the admiralty courts are extremely fertile of cases turning upon the proper speed of steamers in foggy weather, there is a singular paucity of such as deal with the speed of sailing vessels. Such as there are, however, point to a uniformity of regulation applicable to the two classes. The earliest of these cases is that of *The Virgil*, (1843) 2 W. Rob. 201. This was a collision between two sailing vessels in a dark and hazy night, although there does not seem to have been a fog. As it appeared that the Virgil had the wind free, and was sailing under a full press of canvas, she was held in fault for too great speed. Her actual speed is not given. In the case of *The Victoria*, 3 W. Rob. 49, a vessel running before the wind on a dark and cloudy night at the rate of from five to six knots an hour off the English coast, was held to have been in fault for proceeding at that rate of speed.

Upon the other hand, in the case of *The Morning Light*, 2 Wall. 550, a brig running through Buzzard's Bay in a dark and rainy night, was held not to have been in fault for not shortening sail. The court, commenting on the case of *The Virgil*, observed: "But such a restriction," as was laid down in that case, "can hardly be applied to sailing vessels proceeding on their voyage in an open sea. On the contrary, the general rule is that they may proceed on their voyage although it is dark, observing all the ordinary rules of navigation, and with

such additional care and precaution as experienced and prudent navigators usually employ under similar circumstances. They should never, under such circumstances, hazard an extraordinary press of sail, and in case of unusual darkness, it may be reasonable to require them, when navigating in a narrow pathway where they are liable to meet other vessels, to shorten sail if the wind and weather will permit." The actual speed of the Morning Light is not given, although the wind seems to have been blowing a five to six-knot breeze, which would indicate a somewhat lower rate of speed than in this case. In the case of *The Itinerant*, 2 W. Rob. 236, decided in 1844, Dr. Lushington was of opinion that it was the duty of the shipmaster, whether in a dense fog or great darkness, to exercise the greatest vigilance and to put his vessel under command, although such precautions might occasion delay in the prosecution of the voyage. "It may be," said he, "that for such a purpose it would be his duty to take in his studding sails; but such is the constantly varying combination of circumstances arising from locality, wind, tide, number of vessels in the track and other considerations, that the court cannot venture to lay down any general rule which would absolutely apply in all cases." So, too, in *The Pepperell*, Swabey, 12, Dr. Lushington held a ship proceeding in the North Sea at the rate of six and one-half knots an hour during a night so dark that vessels could only be seen at a distance of 100 to 200 yards, was in fault if she knew, or ought to have known, that she was crossing a fishing ground. See, also, *The Lord Saumarez*, 6 Notes of Cases, 600; *The Juliet Erskine*, Ibid. 633.

These cases were all decided before the new steering and sailing rules, which were first adopted in 1863 by a British Order in Council, and in 1864 by an act of Congress. The twenty-first of these rules, as they appear in the Revised Statutes, section 4233, requires that "every steam vessel shall, when in a fog, go at a moderate speed." No mention is made in this rule of sailing vessels, but the courts, both in England and America, so far as they have spoken upon the subject, have adhered to the rule laid down in the earlier cases above cited — that rates

of speed which would be considered immoderate for steamers are open to like condemnation in the case of sailing vessels. See discussion in *The Chancellor*, 4 Ben. 153, 160. In *The Thomas Martin*, 3 Blatchford, 517, a schooner was condemned by Mr. Justice Nelson for racing on a night which was not unusually dark, yet was so overcast and cloudy that a vessel without lights could not be seen at a distance exceeding a half mile. The schooner had all her sails set, with a pretty fresh wind, and was running at a rate of speed that, under the circumstances, he thought could not well be justified considering the character of the night.

In the case of *The Johns Hopkins*, 13 Fed. Rep. 185, it was held by Mr. Justice Harlan and Judge Lowell that, in case of a fog and in a place much frequented by vessels, it was as much the duty of a sailing vessel to go at a moderate rate of speed as it was the duty of a steamer. In this case a brig, sailing with the wind nearly aft and making eight to nine knots through the water, with a current of two knots in her favor, off the coast of Cape Cod, was held to have been in fault for a collision with a steamer in a dense fog. So in *The Wyanoke*, 40 Fed. Rep. 702, it was held by Judge Brown, of the Southern District of New York, that a schooner having nearly all her canvas set and running in a dense fog off Cape May at a speed of six knots an hour, was not going at the moderate speed required by law. In *The Attila*, Cook's Cas. 196, the Vice Admiralty Court at Quebec condemned a sailing vessel for running at a speed of six or seven miles an hour, in a dense fog in the fairway from the Atlantic Ocean, between Cape Ray and St. Paul's Island into the Gulf and the lower waters of the St. Lawrence River, although there was abundance of evidence that this was the customary rate of speed during a fog in this locality.

In 1879 a new code was adopted in England, and in 1885 in this country, article 13 of which provides that "every ship, *whether a sailing ship or steamship* shall, in a fog, mist or falling snow, go at a moderate speed."

In the case of *The Elysia*, 4 Asp. Mar. Law Cas. (N. S.) 540, 544, it was held by the Admiralty Court and by the Court of

Appeal in England, that a speed of five knots in the case of a sailing ship out in the Atlantic Ocean in a fog, is a moderate speed, although at the time she was under all plain sail and going as fast as she could with the wind on her quarter. Lord Justice Brett was of opinion that a moderate speed was not absolutely the same with regard to a steamer as to a sailing vessel. "If you were to say that three knots were a moderate speed for a steamer in which to turn from one point to another when out in the ocean, that does not presume that that would be a moderate speed for a sailing vessel, because a steamer can reduce her speed to a knot and a half. It would, however, be very dangerous for a sailing vessel, under all circumstances, to reduce her speed to anything like three knots, because such a speed would, in certain circumstances, place her entirely out of command."

In *The Zadok*, L. R. 9 P. D. 114, which was a collision between a steamship and a barque in the English Channel, it was held to have been the duty of the barque to reduce her speed so far as she could consistently with keeping steerageway, and as it was shown that she was carrying nearly all her canvas and proceeding at a speed of more than four knots an hour, she was held to be in fault and the steamer exonerated. A like ruling was made by the Master of Rolls, speaking for the Court of Appeal in *The Beta*, L. R. 9 P. D. 134. The collision took place in a dense fog in the Bristol Channel, and it was held that a vessel must not go faster than would enable her to be kept under command.

In the case of *The N. Strong*, (1892) L. R. P. D. 105, which was a collision in the English Channel, it was held that a sailing vessel which was making about four knots an hour in a fog, was not proceeding at a rate of speed beyond what was necessary to keep her well under command.

The cases in the American courts are of the same purport. In *The Rhode Island*, 17 Fed. Rep. 554, it was held by Judge Brown of the Southern District of New York, that a speed of seven knots an hour in a foggy evening in Long Island Sound was not a moderate rate of speed, although the twenty-first rule did not apply in terms to sailing vessels.

No absolute rule can be extracted from these cases. So much depends upon the density of fog and the chance of meeting other vessels in the neighborhood, that it is impossible to say what ought to be considered moderate speed under all circumstances. It has been said by this court, in respect to steamers, that they are bound to reduce their speed to such a rate as will enable them to stop in time to avoid a collision after an approaching vessel comes in sight, provided such approaching vessel is herself going at the moderate speed required by law. It is not perceived why the considerations which demand a slackening of speed on the part of steamers in foggy weather are not equally persuasive in the case of sailing vessels. The principal reason for such reduction of speed is that it will give vessels time to avoid a collision after coming in sight of each other. If two steam vessels are approaching upon converging courses at a combined rate of speed of thirty miles an hour, and are only able to see each other three or four lengths off, it would be practically impossible to avert a collision; whereas, if each were going at the lowest rate of speed consistent with good steerageway, a collision might easily be avoided by stopping and reversing their engines, or by a quick turn of the wheel and an order to go ahead at full speed. While sailing vessels have the right of way as against steamers, they are bound not to embarrass the latter, either by changing their course or by such a rate of speed as will prevent the latter from avoiding them. There is also the contingency that a schooner sailing with the wind free, as in this case, may meet a vessel closehauled, in which case the latter has the right of way, and the former is bound to avoid her. Beyond this, however, a steamer usually relies for her keeping clear of a sailing vessel in a fog upon her ability to stop and reverse her engines; whereas, it is impossible for a sailing vessel to reduce her speed or stop her headway without manœuvres which would be utterly impossible after the two vessels come in sight of each other. Indeed she can do practically nothing beyond putting her helm up or down to "ease the blow" after the danger of collision has become imminent. The very fact that a sailing vessel can do

so little by manœuvring is a strong reason for so moderating her speed as to furnish effective aid to an approaching steamer charged with the duty of avoiding her.

In this case the Golden Rule, though not pursuing the most frequented path of coastwise commerce, was sailing through waters where other vessels were frequently met, and not far from the usual track of transatlantic steamers. Her foghorn was heard by the steamer but once, or possibly twice, while if the vessels had been proceeding at the speed required by law, their signals would have been exchanged so many times that the locality and course of each would have been clearly made known to the other. In other words, sufficient time would have been given for the steamer to have taken the proper steps to avoid the schooner. Upon the whole, we are of opinion that the courts below were right in condemning the schooner for immoderate speed.

2. An important question of damages remains to be considered. Libellants, as bailees for the owners of the cargo, proceeded against and were held entitled to recover of the steamship the entire value of the cargo, but the latter was allowed to recoup one half of this amount from one half the amount of damages suffered by the schooner. This appears to have been done upon the authority of *The North Star*, 106 U. S. 17, in which it was held that, where a collision occurred through the mutual fault of two vessels, one of which was sunk and the other of which was damaged, the owners of the sunken vessel were not entitled under the Limited Liability Act to an entire exoneration from liability, but that the damage done to both vessels should have been added together in one sum, and equally divided, and a decree should have been pronounced in favor of the vessel which suffered most against the one which suffered least, for half the difference between the amounts of their respective losses. A similar ruling was made in *The Manitoba*, 122 U. S. 97, and in *The Stoomvaart Maatschappy Nederland* v. *Pen. & Or. Steam Nav. Co.*, 7 App. Cas. 795.

But libellants insist in this connection that the act of February 13, 1893, known as the Harter Act, has modified the

previous existing relations between the vessel and her cargo, and has an important bearing upon this branch of the case. By the third section of that act, the owner of a seaworthy vessel (and, in the absence of proof to the contrary, a vessel will be presumed to be seaworthy) is no longer responsible to the cargo for damage or loss resulting from faults or errors in navigation or management. This section is made applicable to "any vessel transporting merchandise or property to or from any port in the United States;" and we know of no reason why a foreign vessel like the Golden Rule, engaged in carrying a cargo from a foreign port to Boston, is not entitled to the benefit of this provision. Had the cargo of the schooner arrived at Boston in a damaged condition, it is clear that the vessel might have pleaded the statute in exoneration of her liability, if the damage had occurred through a fault or error in navigation, such, for instance, as a collision due wholly or partly to her own fault. So, if a vessel and cargo be totally lost by such fault, we know of no reason why the owner of the vessel is not entitled to the benefit of this section, as well as to his exemption under the Limited Liability Act.

The reasons which influenced this court to hold in the case of *The Scotland*, 105 U. S. 24, that the Limited Liability Act applied to owners of foreign as well as domestic vessels, and to acts done on the high seas, as well as in the waters of the United States, apply with even greater cogency to this act. "In administering justice," said Mr. Justice Bradley, p. 29, "between parties, it is essential to know by what law, or code, or system of laws, their mutual rights are to be determined. When they arise in a particular country or State, they are generally to be determined by the law of that State. Those laws pervade all transactions which take place where they prevail, and give them their color and legal effect. . . . But, if a collision occurs on the high seas, where the law of no particular State has exclusive force, but all are equal, any forum called upon to settle the rights of the parties would *prima facie* determine them by its own law, as presumptively expressing the rules of justice; . . . if it

be the legislative will that any particular privilege should be enjoyed by its own citizens alone, express provision will be made to that effect. . . . But the great mass of the laws are, or are intended to be, expressive of the rules of justice, and are applicable alike to all. . . . But there is no demand for such a narrow construction of our statute," (as was given by the English courts to their Limited Liability Act,) "at least to that part of it which prescribes the general rule of limited responsibility of shipowners. And public policy, in our view, requires that the rules of maritime law as accepted by the United States should apply to all alike, as far as it can properly be done. If there are any specific provisions of our law which cannot be applied to foreigners, or foreign ships, they are not such as interfere with the operation of the general rule of limited responsibility. That rule and the mode of enforcing it are equally applicable to all. They are not restricted by the terms of the statute to any nationality or domicil. We think they should not be restricted by construction." It will be observed that the language of the Harter Act is more specific in its definition of the vessels to which it is applicable, than the Limited Liability Act, which simply uses the words "any vessel," whereas, by the third section of the Harter Act, it is confined to "any vessel transporting merchandise or property to or from any port in the United States." Where Congress has thus defined the vessels to which the act shall apply, we have no right to narrow the definition. It may work injustice in particular cases where the exemptions are accorded to vessels of foreign nations which have no corresponding law, but this is not a matter within the purview of the courts. It is not improbable that similar provisions may ultimately be incorporated in the general law maritime. Indeed, the act has been already held by this court applicable to foreign as well as to domestic vessels. *The Silvia*, 171 U. S. 462. See also *The Etona*, 64 Fed. Rep. 880; *The Silvia*, 68 Fed. Rep. 230.

Assuming then that the Harter Act applies to foreign vessels, we are next to inquire into its effect upon the division of damages in this case. It was held by this court in the

case of *The Atlas*, 93 U. S. 302, that an innocent owner of a cargo is not bound to pursue both colliding vessels, though both may be in fault, but is entitled to a decree against one alone for the entire amount of his damages. It was held by the courts below that, while the action by the owner of the cargo would lie against the steamer for the whole amount of damage done, the owners of such steamer were entitled to recoup one half of this amount against one-half of the amount awarded to the owners of the schooner for the loss of their vessel, upon the theory that, under the Limited Liability Act, they were liable for one half this amount, not exceeding the value of the schooner. But libellants insist that as the third section of the Harter Act declares that the owners of a seaworthy vessel shall not be liable in any amount for damage or loss resulting from a fault or error in navigation, the owners of the schooner are entitled to this exoneration, whether the action be directly against the vessel by the owner of the cargo, or by a third party, who is claiming the rights to which he is entitled, and who for that purpose is standing in his shoes. That the exemptions of the act are not intended for the benefit of the steamship or any other vessel, by whose negligence a collision has occurred, but for the benefit of the carrying vessel alone; and if she be held liable in this indirect manner for a moiety of the damages suffered by the cargo, the act is to that extent disregarded and nullified. That the amount which is paid by recoupment from the just claim of the schooner against the steamship is paid as effectually as it would be by a direct action by the owners of the cargo against the schooner; and while in this case it works an apparent hardship upon the steamer, (a hardship more apparent than real, owing to the greater fault of the steamer,) it does not in reality extend her liability, but merely prevents her taking advantage of a deduction to which without the act she might have been entitled.

But the majority of the court are of opinion that the principles announced by us in *The North Star*, 106 U. S. 17; *The Manitoba*, 122 U. S. 97; *The Delaware*, 161 U. S. 459; and *The Irrawaddy*, 171 U. S. 187, are equally applicable here.

The case of the *North Star* is especially pertinent. That case arose from a collision between two steamships, one of which, the *Ella Warley*, went to the bottom, while the other was considerably damaged. The suit was tried upon libel and cross-libel, both vessels found in fault, and the damages ordered to be divided. No question arose with regard to the cargo, but the owners of the *Ella Warley* raised a question as to the amount of their recovery under the Limited Liability Act, which provides (Rev. Stat. § 4283) that "the liability of the owner of any vessel . . . for any loss, damage or injury by collision . . . occasioned, or incurred, without the privity, or knowledge of such owner or owners, shall in no case exceed the amount or value of the interest of such owner in such vessel, and her freight then pending." It seems that, if the vessel be totally lost, the liability of her owner is thereby extinguished. *Norwich Company* v. *Wright*, 13 Wall. 104. The owners of the Ella Warley sought to apply this rule to a case of mutual fault, and contended that, as their vessel was a total loss, the owners were not liable to the *North Star* at all, not even to have the balance of damage struck between the two vessels; but that half of their damage must be paid in full without deduction of half the damage sustained by the *North Star*. But the court held "that where both vessels are in fault, they must bear the damage in equal parts; the one suffering the least being decreed to pay to the other the amount necessary to make them equal, which amount, of course, is one half of the difference between the respective losses sustained. When this resulting liability of one party to the other has been ascertained, then, and not before, would seem to be the proper time to apply the rule of limited responsibility, if the party decreed to pay is entitled to it. It will enable him to avoid payment *pro tanto* of the balance found against him. In this case the duty of payment fell upon the *North Star*, the owners of which have not set up any claim to a limit of responsibility. This, as it seems to us, ends the matter. There is no room for the operation of the rule. The contrary view is based on the idea that, theoretically, (supposing both vessels in fault,) the owners of the one are liable to

the owners of the other for one half of the damage sustained by the latter; and, *vice versa*, that the owners of the latter are liable to those of the former for one half of the damage sustained by her. This, it seems to us, is not a true account of the legal relations of the parties. It is never so expressed in the books on maritime law. . . . These authorities conclusively show that, according to the general maritime law, in cases of collision occurring by the fault of both parties, the entire damage to both ships is added together in one common mass and equally divided between them, and thereupon arises a liability of one party to pay the other such sum as is necessary to equalize the burden. This is the rule of mutual liability between the parties."

In delivering the opinion Mr. Justice Bradley cited and disapproved of the case of *Chapman* v. *Royal Netherlands Navigation Co.*, L. R. 4 P. D. 157, which was much relied upon by counsel for the Ella Warley. It is interesting to note that this case was overruled by the House of Lords three months before the opinion in the *North Star* was delivered, in the case of the *Stoomvart Maatschappy Nederland* v. *The Peninsular and Oriental Steam Navigation Co.*, L. R. 7 App. Cas. 795, and the rule laid down in the *North Star* adopted. The same rule was subsequently applied in *The Manitoba*, 122 U. S. 97.

The other cases are not directly in point, but their tendency is in the same direction. In that of *The Delaware*, 161 U. S. 459, it was said that the whole object of the Harter Act was to modify the relations previously existing between the vessel and her cargo, and that it had no application to a collision between two vessels. In *The Irrawaddy*, 171 U. S. 187, it was held that, if a vessel be stranded by the negligence of her master, the owner had not the right, under the Harter Act, to a general average contribution for sacrifices made and suffered by him subsequent to the stranding, in successful efforts to save the vessel, freight and cargo.

But if the doctrine of the *North Star* be a sound one, that in cases of mutual fault the owner of a vessel which has been totally lost by collision is not entitled to the benefit of an act limiting his liability to the other vessel until after the balance

of damage has been struck, it would seem to follow that the sunken vessel is not entitled to the benefit of any statute tending to lessen its liability to the other vessel, or to an increase of the burden of such other vessel, until the amount of such liability has been fixed upon the principle of an equal division of damages. This is in effect extending the doctrine of the *Delaware case*, wherein the question of liability for the loss of the cargo was not in issue, to one where the vessel suffering the greater injury is also the carrier of a cargo — in other words, if the Harter Act was not intended to increase the liability of one vessel toward the other in a collision case, the relations of the two colliding vessels to each other remain unaffected by this act, notwithstanding one or both of such vessels be laden with a cargo.

We are therefore of opinion that the Court of Appeals did not err in deducting half the value of the cargo from half the value of the sunken schooner, and in limiting a recovery to the difference between these values. The decree is

Affirmed.

The Chief Justice and Mr. Justice Peckham dissented.